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City of San José city council meeting.

>> Mayor Reed: I think I've got enough people here to start. [Gavel] Good afternoon, I'd like to call the San José city council meeting to order for February 9th, 2010. We will start our meeting with an invocation. Councilmember Kalra will introduce the invocator.

>> Councilmember Kalra: Thank you, mayor. This afternoon we have pastor Anne Carlson with us from the new creation Lutheran church in South San José. Which labels itself as a new church for a new century. And the new church was actually chartered in South San José back in November of 1995. A month later the church actually burned to the ground and they rebuilt, opened up again in '98. Pastor Carlson joined the church in 2004, and I think that has certainly been a blessing to South San José. And I know the church does a tremendous amount of community service work and community service activities and is open to all people and most recently, ironically, given the church's history, right across the street there was a home which burned to the ground, and Mrs. Garcia who lived there lost her husband and her son. And just a couple weeks ago I was at the church and they did a fantastic job having a really lively fun, fund raiser festive atmosphere raising a lot of money for Mrs. Garcia. So I wanted to thank the church for the couldn't support of the community and of course for Mrs. Garcia as well.

>> Distinguished councilmembers, staff, and visitors, it is truly an honor to be here and to be invited to lead the invocation for this meeting. You all do such an incredible job and so much for the well-being and the guiding of our city, with great personal commitment and at great personal cost! So I personally extend my thank you for all that you do for all of us citizens. I serve as the pastor of new creation Lutheran church and next generation children youth and family ministries on what I like to describe as the far end of Santa Teresa boulevard. In fact, Morgan hill school district is directly across the street so we're way out there. We're a small but growing and vibrant ministry in our neighborhood and we are delighted to be represented by such an active, passionate and caring councilman in Ash Kalra. Thank you so much for all of your involvement. It's really been wonderful to discover our mutual passions as we keep showing up in the same places and I think those of you who were at the library opening on Saturday truly an exciting part of our neighborhood to have such a beautiful new library in our midst. So thank you for being there, and spearheading that effort. So I'd like to invite all of us now to join together to invite God's presence and blessing on our midst. Gracious and loving God: I give you great thanks for this dedicated and passionate city council. I give you thanks for this vibrant and dynamic city, in which we live, and where we work, study, learn, worship and play. We ask for your continued gracious blessing on this work that these elected officials do. We ask your presence today and every day in this meeting and in each of their lives. We pray this in the name of God, the source of all life, Jesus, the word of truth, and the holy spirit, a spirit of living love. Amen.

>> Mayor Reed: Thank you. We will now do the pledge of allegiance and we happen to have some people here today who can help us by leading the pledge of allegiance, country lane elementary school, we have some third graders of course from district 1. So please stand up and we'll do the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: Thank you, country lane elementary school. First item of business are the orders of the day. We have a couple of changes from the printed agenda that we need to make. Item 2.3B, the rules report from January 13th, 2010, will be deferred one week. Item 3.6, the fiscal year 2009-10 first quarter revenue collection strategic plan report will be deferred one week, and the adjournment of the council in memory of Juanita Serrato Lopez will occur at a future council meeting. Any other changes on the orders?

>> Councilmember Pyle: Motion to approve the balance.

>> Second.

>> Mayor Reed: We have a motion to approve as modified, all in favor, opposed, none opposed, those are approved. We will adjourn today's meeting in honor of Juan Manuel Flores, longtime resident of Northside. Councilmember Liccardo has additional words.

>> Councilmember Liccardo: Thank you, Mayor. We are honored to be accompanied by the many members of Juan Manuel Flores' family. Juan was a loving husband of Gloria Flores, who is here, for 41 years. And they have a, as you can see, wonderful offspring here, six daughters, they are Mercedes, Maria, Gloria, Monica, Gabriella, and Maricella. Six sons-in-law and eleven grandchildren. I see several of the grandchildren there, Raquel, John Anthony, Alex, Bobby, Evan, Kaitlin, Brian, Michaela, Sara, Emily and Santiago. This wonderful family obviously has been obviously a big part of Northside and this community for many years. Juan Manuel graduated from Bellarmine in 1954. And he is perhaps best known in the community for having been the proprietor at the Guadalajara market for 40 years, which was

back in the day before the community centers existed, this was a community center of sorts. It opened in the '50s. It was known of course for its gargantuan burritos, and the lunch crowds were very large, sometimes snaking around the building at Empire and 10th. And Juan Manuel would walk out to the end of the line and tell customers if they didn't get their lunch in 15 minutes it was free. This was not fast food, though. These burritos were home made. They were from home made tortillas, filled with delicious meats, made fresh every morning, and this was not simply Juan Manuel's only passion and adventure. In fact he was a radio DJ in the 1970s for a Mexican radio station, he learned to ski in the 1980s. He always had an adventurous spirit. He loved to travel with his wife, Gloria. They traveled throughout Mexico, Europe, Puerto Rico and the holy land. They were very active in the Northside neighborhood. They were strong advocates for bringing lights to Bequesto park, for which we are all very grateful. They attended neighborhood meetings across the street from their home over in the old empire library, and of course they provided free catering to many city events including several Cinco de Mayo celebrations over at the library. Juan Manuel was a very active member of Holy Cross Church. He was a very humble man. He treated everybody with dignity and respect and immense love of his family and of life and of his community and of course his greatest happiness was having his family over for a big meal, playing cards with them afterward. His last such family gathering was the Sunday before his passing where he enjoyed several bowls of Pesole and lost at poker to his seven-year-old grandson. With that, I wanted to keep in mind the wonderful memory of Juan Manuel for everything he has given to our community.

>> Mayor Reed: Thank you very much, Councilmember Liccardo. Next item is closed session report City Attorney.

>> City Attorney Doyle: Yes Mr. Mayor, the council met in closed session this morning. I have one item to report out the settlement has now been signed and final. It is the case, city versus PG&E. The PG&E is to pay the city \$6 million. They've also agreed to increase the franchise fee by .3%, and to waive a street light audit amount of \$1.08 million. The settlement or the increase in the franchise fee is subject to PUC approval.

>> Mayor Reed: Our next item are ceremonial items. I'd like to invite councilmembers Campos and Kalra and Linda Tsai from the American heart association to join me at the podium. Today we're recognizing American heart month in the City of San José. As soon as we get everyone assembled Councilmember Kalra will have more explanation of what we're doing.

>> Councilmember Kalra: Thank you, mayor. Today, we're here to recognize not only the importance of heart disease and the impact it has on us as a community here and throughout the country and throughout the world but also to recognize the successes that we've had as well. Cardiovascular disease is the nation's leading cause of death with direct and indirect cost estimated to be \$503.2 billion in 2010. It accounts for over 34% of all deaths nationwide, and nearly 2300 Americans die of cardiovascular disease each day, an average of one death every 38 seconds. And this is certainly something personal to me. Back in '94 when my father was in his 40s he almost died of heart disease and it is something that my family as well as many other families in our community have to struggle with and live with and manage on a daily basis. So I am very happy to have representatives from the American heart association but as well, to have a survivor with us today. And first I'd like to ask the mayor if he could present the proclamation to Linda Tsai from the American heart association.

>> Mayor Reed: Thank you very much. [applause]

>> Councilmember Kalra: And I'm really happy to have with us here Barry Altschuler, please come up. She is actually a survivor of heart disease, be honored to ask her to share a few words.

>> Hi, my name is Barry Altschuler, and on behalf of the American heart association I just want to thank Ash Kalra and Nora Campos for sponsoring this proclamation. We also wanted to thank the City of San José for bringing so much attention to the number one cause of death among men and women in the United States. But the good news is, is that it is preventable. and with more education and awareness we can change the statistic. We do hope that in the future we all live healthy lives free of cardiovascular disease so thank you very much. [applause]

>> Mayor Reed: Thank you for joining us today. For our next item I'd like to invite Councilmember Nguyen to join me and Councilmember Kalra at the podium. While Sheila Johnson Hickock and Marian Whittaker from 100 Black Women of Silicon Valley join us, as soon as we get the photos done. Today we're issuing a proclamation declaring February as African American history month in San José. Councilmember Nguyen has some of the details -- Councilmember Kalra has the details.

>> Councilmember Kalra: And so black history month actually evolves out of -- from Dr. Carlo woods who in 1996 introduced Negro history week. And you know it's really become a part of American history to

recognize the contributions of African Americans through black history month. When we do so we have to think about black history, think about our history and think about the tragedy of our history as well in that our country especially in the early goings like in the first couple hundred years leaning up to independence, at least 100 years and beyond from our independence, really relied and gained much of its success off the backs of the African American community and slavery and that's something that we always have to recognize. As -- but however as one of our great Americans said, Frederick Douglas, if there is no struggle there is no progress. We actually can see that we have progressed and there is certainly more work to do but this month is about recognizing the achievements of the African American community and recognizing how important the African American community is to the fabric of us, the fabric of the City of San José and to this nation. And so it is my honor to ask Mayor Reed to present to Sheila Johnson Hickok, the president of 100 Black Women of Silicon Valley, who is accepting this award on behalf of the NAACP, both organizations are extremely valuable partners in the community to what we want to achieve here in San José.

>> Mayor, city council, members, I want to thank you very much for this proclamation. Marion Whittaker is stuck in court today. Crime never seems to stop. For us, we are delighted to receive this on behalf of the African American community. This plaque is actually dedicated to the NAACP. The 100 black men. The 100 black women. And all of the African American community leaders that strive for equality in education, in government, in all of the political structures, in financial growth for the community. Because as you know, the last person served is the first person to grow to the new level. So I thank you today, San José, for allowing us a couple of minutes of your time, and to present the proclamation. [applause]

>> Mayor Reed: Thank you. Now I'd like to invite Anu Frasad, from Linbrook High School future business leaders of Americans coat president, to join us at the podium. Today we're issuing a proclamation in recognition of future business leaders of America, the phi beta lambda week, which runs from February 7th to the 13th. Future business leaders of America is a professional business organization dedicated to bringing business and education together in a positive working relationship to give students firsthand experience through career development programs. We're very proud to recognize all the students who participate in the FBLA, and look forward to seeing them and their future companies grow and thrive here in San José. We're creating the new entrepreneurs that will help us continue to be the world center of innovation. We're happy to present this on behalf of the entire city. [applause]

>> On behalf of future business leaders of America I just want to thank the city council and the mayor for presenting the award to us and for enhancing business education in our community. Thank you for the time. [applause]

>> Mayor Reed: Our next item is the consent calendar. Are there items councilmembers would like to pull from consent calendar for discussion? I have requests to pull item 2.4 and 2.7. Councilmember Campos.

>> Councilmember Campos: I wanted 2.7 to be pulled and it has been, thank you.

>> Mayor Reed: Any others? I guess not. Is there a motion on the balance? Motion is to approve the rest of the consent calendar. All in favor opposed, none opposed, those are approved. We'll take up item 2.4 first. Mr. Wall wanted to speak on that, excused absences.

>> David Wall: Good afternoon. I believe that this is an outstanding program that will serve the city in various ways. One of which could serve the city in the elimination of lobbying contracts for our lobbyists that are in Sacramento on taxpayer expense. There is an inherent problem with this, is that it's going to become so popular with councilmembers that staffing council committees is going to be problematic so a new mechanism has to be developed. Because Councilmember Pyle gets all the credit for this great program, by the way, and this is outstanding. However, with three of the Rules people taking off tomorrow, or -- we won't have a Rules Committee. So therefore, council has to have some way of back-filling in for these council committees, so the business of the city gets done, while the lobbying business of the city gets done at a far better return of the public's investment that we currently are spending. I think the Sacramento express is very well thought of, a good program, and I hope also, that the San José police also accompanies you, for obvious reasons. Thank you very much.

>> Mayor Reed: That concludes the public testimony on item 2.4. Is there a motion? Motion is to approve the excused absences, all in favor, opposed, none opposed, those are approved. Item 2.7 is the Water District joint advocacy item, Councilmember Campos you wanted to discuss that?

>> Councilmember Campos: Thank you. First of all, I want to commend the Rules Committee for make sure that this came to council that we could support it. Albert, I know that you're aware and I know the council's very much aware that the City of San José, along with the Water District, were awarded a

federal stimulus dollars for flood protection work on Lower Silver Creek. And one of the things that I have been a big advocate and I've been working with Albert on is that as we receive funding, and we're in these joint projects to improve our trails, at the same time and I know that one of our goals is to create 100 miles of trails over the next 15 years, that we need to be able to streamline and seize the opportunity to be able to use our money to leverage with the federal money when we're building these trails. And one of the things I wanted to ask Albert and I don't know if it's Albert I should be asking or the City Manager but do we have a mechanism in place that, as these moneys are awarded or approved, and we start going out for construction, with the Water District and the city, that we're making sure that we are putting these projects first, and -- or making sure that we are in sync with federal moneys, so that we're getting the best opportunity to leverage our money?

>> Albert Balagso: Albert Balagso, director of Parks, Recreation, and Neighborhood Services. There is an ongoing collaborative meeting that we had between the water district and the City of San José and we do have the opportunity to discuss as we move forward with particular projects and funding opportunities. We also are in collaboration with them as we discuss the capital programs so that we can as best we can align the funding that we have for projects that we can have the critical mass come together when they have the opportunities and projects as well. I think a good example of how that came together is the undercrossing at the airport in which we were able to make both projects work together and the agency was able to build that projects in combination with us. So we will continue to work this way in the collaborative meetings that we do have and seek every opportunity we can with them.

>> Councilmember Campos: Thank you. Albert one other question. If the money is approved through this project and they start work in that particular area, if there are -- if it is slated for trails, will that come to the top for that particular area or how do you guys measure that?

>> Albert Balagso: I'll have to dig more into the specifics of the project itself. We can get back to you on that.

>> Councilmember Campos: An info memo would be great.

>> Albert Balagso: Okay.

>> Councilmember Campos: With that I move for approval.

>> Mayor Reed: Motion for approval. I have one request to speak on that item, Mr. Wall.

>> David Wall: Pardon me.

>> Mayor Reed: Make sure the microphone is on. Try it again.

>> David Wall: Is it working?

>> Mayor Reed: Now it is.

>> David Wall: To make this project work, there -- legislation is needed in the form an urgency ordinance to completely outlaw water softeners and other significant contributors to salt. As water conservation is taking place, there is a concentration of salts within the collection system that affects the quality of reclaimed water, and also, what will happen with the advanced water filtration, which is a joint project, in concentrating the salt and other products in the waste stream, the waste product from the advanced water filtration is going to be metered into the plant's final effluent. This is to keep cost down, because they will use the City's NPDES permit for discharge to the bay. This increased concentration of brine is just not salt. It's heavy metals, it's everything that's in the waste collection system and it will be concentrated. Metering it into the final effluent will be a very interesting task. Because of toxic hits that may occur to the organisms that are used as test organisms to determine toxicity levels. So it would behoove of you to create this concentration to start eliminating salt, not creating a salinity manager's program but an outright ban of water softeners and all material aspects of salt into our waters. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve. All in favor opposed, none opposed. Consent calendar is approved. All of it. Next item is item 3.5, that's the mayor's budget prioritization survey results. We'll have a presentation from our consultant on this. I just like to note that we do this scientific community survey as part of our community based budgeting process that began in 2007 with Reed reform number 29 which starts our budget process with this survey of the -- of our residents. We do it as a really important part of making sure that when we get to the end of the budget process, that the budget we adopt reflects the priorities and values of our community. So we always survey the City's perception of services, their funding priorities and support or opposition to revenues, or cutting and things like that, give us some good guidance as to where our people are when we're having to make decisions about what goes through the tops and the bottoms of the list. This year we held an additional meeting. We did a mayor's budget message workshop and talked in large part

about revenue ideas which we ought to pursue and we asked the community members to vote on which measures we should pull and include in this poll and include in this top five were sales tax increase, modernizing the business tax, parking tax, waste disposal tax and card room tax and those are all reflected in the polling information. We'll also have a study session next week on the 16th, and discuss what to do with revenues measures and other things to do with the budget, senior staff and council meeting specifically on budget. We've done this survey several times now and I just wanted to point out that again, when we asked our residents what is their preference for how we solve our budget shortfall problems, how we balance the budget, they prefer reducing compensation and benefits over reducing services or raising revenues by substantial margins. That's something that is consistent over the years. And the City Manager and the administration are in the process of negotiating with our bargaining units over this issue through the usual meet and confer process and, with that, I'd like to turn it over to our city staff. I don't know if the City Manager is going to introduce this or if we're just going to jump right into it?

>> City Manager Figone: Just jump right into it Mr. Mayor.

>> Thank you very much, Mr. Mayor, members of the council, members of the public, my name is David Metz, I'm a partner with Fairbank, Maslin, Mullin, Metz, and Associates. I'm pleased today to report the results of the 2010 budget prioritization survey. A full report of the survey data including cross tabulated results and a written narrative has already been presented to you. I'm going to walk through today some of the most critical highlights of that survey, and then I'd be happy to answer any questions you may have. Briefly, the methodology of this survey was modified somewhat from that used in prior years. As in prior years we've divided our sample in half. Half our interviews are with adult residents of the city, and half are with voters who are considered likely to vote in this November's coming election. Drawn from lists of registered voters in the city. That part of the methodology has been consistent from year to year. This year as with the community survey we added a component in which we interviewed residents on cell phones as well. That don't use land lines on a regular basis so that they're included in the sampling that you see before you. There's a few places in the survey where I will make reference to comparisons to data that we drew from the two prior surveys that we conducted in 2008 and 2009. One of the broadest questions we asked in the survey which the mayor referenced a moment ago is one in which we asked the respondents to choose between three different ways the city might address its budget shortfall. And indicate which they thought should be the highest priority for the city, either reducing compensation and retirement benefits for city employees, reducing services or raising additional revenue including taxes or fees. As you'll see here reducing compensation and retirement benefits was the first choice of 41% of the residents and voters we interviewed and was the first or second choice of two-thirds of those we interviewed. The numbers were comparable for reducing city services or raising additional revenue in the context of this question. Now as a follow-up, we told the respondents that making reductions to compensation and retirement benefits alone might not be enough to address the City's entire budget shortfall and we asked them to then choose between the two remaining options raises additional revenue through taxes or fees or reducing existing city services. This exact question is one that we've asked in our two prior budget prioritization surveys and the results this year came out statistically identical to the ones we saw in 2009 and 2008. With a 45% plurality favoring the idea of reducing city services. As is often the case when asked these types of questions voters desire to reduce services in the abstract is somewhat less than their desire to reduce specific named services. As you'll see in the report, we walked through a list of specific public safety services and neighborhood services and asked the respondents to indicate whether they would find it completely somewhat or not acceptable to cut each one. And while there were a number of services that a majority rated as at least somewhat acceptable there were none that a majority rated as completely acceptable. So not surprisingly there is some reluctance among residents to cut a variety of specific city services. In anticipation of that sentiment which was clear in prior years' surveys we had a variety of questions in this year's survey to measure support for a variety of potential revenue increases for the city. Each of which would require in some fashion the approval of local voters. So for the remainder of the slides that I'm going to show you the results reflect the portion of our sample that are voters considered likely to cast ballots in November and not the adult residents who are either not registered to vote or unlikely to vote this year. We presented them with at the beginning of the survey with a description of one potential ballot measure which might be placed before voters and we gave them language that attempted to model the 75 words they might see on the ballot. As you'll see reflected here it posed the idea of a half cent sales tax increase to fund general city services, listed the types of services that might be supported and half the sample we added the language in red which

framed this as a temporary tax that would be limited to a period of six years to see if having a shorter term tax made a difference versus an ongoing one. Among the voters we interviewed we had a narrow plurality of 48 to 47 that indicated they would vote yes on the half cent sales tax proposal although you'll note there is a more intensity of feeling on the no side with 33% saying they would definitely vote no, 26% definitely yes. There is no statistical difference, based on whether voters heard the language limiting the tax to six years, or whether they heard it as an open-ended ongoing tax to support city services. As a follow up to this question we asked the respondents how they would view tax that was smaller in its tax rate, one quarter cent. We also asked about the three other funding mechanisms that the mayor indicated had some support in other community forums and you'll see the level of support that voters indicated for each of these mechanisms on this slide. The only funding mechanism that a majority of voters initially indicated support for was a quarter-cent sales tax increase which voters favored by a 53 to 44% margin. The half-cent sales tax as I noted left the voters evenly divided and we had pluralities or majorities of voters that indicated that they would oppose increasing the tax on waste disposal companies, modernizing business taxes or establishing a 10% tax on parking facility rates in San José. Anticipating that the sales tax might receive somewhat more support than some of the other items and obviously would generate significantly more revenue than a number of them we had some follow up questions designed to test how providing additional background and context might affect voters' willingness to support it. We had a series of arguments that supporters might offer about a sales tax measure and some that opponents might offer. After each we asked if voters would be willing to support that half cent sales tax. As you can see here the positive did increase the margin of support from one point to eight points, drove support up to the majority, the simple majority that would be required for approval at 53 to 45 but the negative messages reduced that margin of support down to 42 points leaving it still at that 50% margin that would be required for approval. The final funding mechanism that we asked about in the survey was the idea of increasing the tax rate on card room revenues in the city. And we also asked about the idea of increasing the number of tables that card rooms are allowed to operate. We asked the question two ways. For half our sample we asked them about the idea of allowing an increase in tables without an increase in the tax rate. For the other half we asked about allowing an increase in tables with an increase in the tax rate from 13% to 15%. As you'll see here a majority of voters, 54%, were willing to support the increase in tables but that majority expanded significantly to 64% when it was paired with the idea of an increase in the tax rate. So that provides a brief overview of some of the key results. As I said there's a lot more detailed information in our report but I would be happy to answer any questions that you have.

>> Mayor Reed: I'd like to start with a question about the likely November voters. Part of this says particularly as it pertains to the sales tax it looks like since the last time we polled on a sales tax our voters have lost a little enthusiasm for raising that sales tax. A lot of things happened since then, the economy's gotten worse and the state has raised some taxes. Since your polling likely November voters, what do you think the prospects might be for a June electorate, better or worse than a November electorate?

>> Based on our analysis of the data Mr. Mayor looks like the prospects might be slightly worse. We went through and looked at the subset of voters who based on their past voting behavior are considered likely to vote in the primary election, where turnout generally has been somewhere in the mid 30s statewide over the course of the past few years as opposed to over 50% in November. What that means is there is a lower turnout among some subgroup of the electorate, including Democrats, younger voters and voters of color that tend to be more supportive of the sales taxes, patterns which are all reflected in this data. So the difference isn't great, it's probably something on the order of 3 to 5 points lower support, but given the close margins that we're looking at here for a simple majority approval, that well could have an impact.

>> Mayor Reed: Another question still on the sales tax looking at your full report, pages 10 and 11, the questions that you ask people to see what might move them one direction or the other, either positive or negative to see what arguments might be persuasive. I'm looking at the positive arguments that are running about 56% to 63%. The people say that was very convincing or somewhat convincing. And then the negative arguments which run 60% to 76%, as very convincing or somewhat convincing. And I'm not sure what to make of that but I see the one that motivates people the most is a negative argument, 76% found it convincing, the city should cut wasteful spending and reduce city bureaucracy, instead of raising taxes on hardworking San José residents. It's always popular to cut waste, fraud and abuse. Unfortunately we don't have a line item in our budget or we would certainly cut it. But the

difference between the positive arguments and the negative arguments, is there any conclusion that we ought to draw from that or think about?

>> It's a good point. And it's fairly typical of what we've seen in polling in other cities around California over the course of the last year or so. There is a, to say the least a heightened level of distrust and cynicism of government at all levels in California right now. It really starts with state government where as you may have seen in public polls, confidence in state government, management of budget issues is at an all time low. We've seen that increasingly weigh down voters' willingness to support taxes and revenue increases at all levels of government. So a lot of the intensity of feeling that you're seeing there is very real. I think a lot of it doesn't stem from any actions that the City of San José has taken, but it does reflect a more broadly held sentiment among voters right now that could impact the ability to pass a tax measure and I think explains a lot of the dropoff of support that you noted we've seen since we asked about a similar concept in last year's survey. Obviously the economy has worsened, but so has that public mood.

>> Mayor Reed: The second highest item on the arguments was basically this is not the right time to raise taxes with more people getting laid off every day, the worst economy in a generation, the state sales tax recently increasing. This is not the right time to raise taxes. I'm hopeful that the economy's actually going to improve over the next six months and we'll start seeing a turn in things so the fact that that's an important argument if we do get some improved economy, that could be helpful pushing us to a region where we might actually have a chance of getting this approved. I don't know if that is a question you ask often and if that number moves around with the economy or is it 72% always say this is not the right time to raise taxes?

>> That number does vary with the economy. And as we noted if you look at the level of support we saw for a sales tax increase a year ago or two years ago in research we did here in San José the fact it has dropped off significantly during that span of time I think is largely due to the current economic context and suggest that if the economy is what it was even a year ago or two years ago voters might be more open to the idea than they are right now.

>> Mayor Reed: My last question is whether or not the cross tabs in your presentation materials are posted online for the public to have access to all of that. I know the staff report is, but the cross-tabs and the underlying report I think people are interested in that and Tom Manheim will let us know.

>> Tom Manheim: They have not been posted. We did distribute them to the council, but we can post them. It's a simple thing to do and we'll get those up.

>> Mayor Reed: Okay, I think that would be helpful so the public can look at this in great detail if they wish. Any other questions? Okay, I think that's it. Thank you for the presentation, appreciate the work.

>> Thank you.

>> Mayor Reed: I think that was it. We just had a presentation. There's no action that needs to be taken. Councilmember Liccardo.

>> Councilmember Liccardo: I'm sorry, mayor, the question wasn't really for the consultant but for staff, in terms of the identification of these particularly items to go poll on. I understand that we had the community process with neighborhood leaders and that helped us identify. Were there any additional ones that we identified that we wanted to add or is that going to weight any future polling from when we go through our ballot initiative decision process?

>> Mayor Reed: We got about a dozen potential revenue sources that might require a vote that we have looked at in the past, we have polled on in the past? And that's the neighborhood leaders we did on the meeting in the workshop and selected the top five I guess. There are other potentials but none that anybody thought could get anywhere near approval are majority. That of course changes and as we modify forward if we're looking at the November election we have similar time to think about it. We don't have much time left for the June election because we have to make a decision about the second meeting in March.

>> Councilmember Liccardo: Reason why I asked, is I do recall there being a fair amount of polling in the last couple of years on how willing folks would be to pay a special tax on street improvements, really focused in around their neighborhoods, that is, by forming individual community facilities districts throughout the city. And it seems as though there's stronger support obviously for police and for services and for street maintenance and improvement than perhaps for other city services. And my question was, was that in the mix that was being tested with the community leaders or is that still out there?

>> Tom Manheim: In terms of the survey, we did not -- we did not put those into the mix for consideration.

>> Councilmember Liccardo: Right, I know that.

>> Tom Manheim: In terms of the community meetings.

>> City Manager Figone: Excuse me mayor.

>> Mayor Reed: Go ahead.

>> City Manager Figone: I know that the staff has continued to analyze the concept of special districts and assessment districts if that's what you're referring to Councilmember Liccardo.

>> Councilmember Liccardo: Yes.

>> City Manager Figone: And I think we could certainly report on that or at least comment on it at the study session next week, mayor, when we're talking about revenues in the broader context.

>> Councilmember Liccardo: Great, wonderful, thank you.

>> Mayor Reed: And that would be part of the conversation for next week but I do remember that one polled so poorly it didn't seem to be worth because it's a special tax requiring a two-thirds vote. And it polled nowhere near that the last time we did it. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor and again thanks for making that a Reed reform to get a larger pulse of the community. An attempt to I know we can only ask 902 people out of a city of a million people I took many of those questions from the poll and put it on the Internet and loud district 6 on my blog to take a good portion of the survey and no it's not controlled and scientific it is a barometer of some matter of public opinion so it's been attached to agenda item number 3.5, it's available on the City's Website but most valuable out of any of the questions was the 564 comments that residents left. And they weren't just district 6 residents because it's out on the page, first question it's throughout the city, and actually some outside of the city. But with that said, I believe out of 564 comments that people left some 490 were from within San José. And they're pretty candid opinions of how they felt that the budget could be balanced or comments. And some of those things are not comprised on the survey that the city did but the ideas that the own public had. I just wanted to let people know it's part of the public record so I just wanted to share it.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: This is a question for Fairbanks, one more thing I wanted to ask you. Before we move on, I know that the last survey you shared with us, the pool of people kind of giving us an outline of -- some were voters, some were on sales, but more the demographics of the survey of the people that you polled this year, is it similar to the first one, or did you have different criteria?

>> For this survey, compared to the community survey, there were two halves to our sample. Half the sample was San José adults, and so the demographic criteria for that portion of the sample were identical to the community survey and reflective of census data about the adult population. For other half of the sample they were voters likely to cast ballots in November of this year so they were reflective of that population. But compared to all adult San José residents that population is older, it is more likely to be homeowners, more likely to be long term residents of the city, less likely to be people of color more affluent generally speaking. So average those two together in these results we have a sample that looks a little bit more like voters than the population at large. But in the cross tabs we are able to separate out those two subgroups and see how each responded to the questions.

>> Councilmember Campos: Thank you for that clarification.

>> Mayor Reed: I have one request from the public to speak on this item, thank you Mr. Metz. We'll take the public testimony now, David Wall.

>> David Wall: I'm fundamentally opposed, at third party surveys that basically serve to be a material misrepresentation of a bargain. Councils, city council members for decades, through their appointed City Manager and labor representatives have entered into what could be described as the Faustian bargain. The bargain here is despite having financial consultants and city employees at high levels of decision making allow these type of benefit structures to be promulgated year after year. Some of which, for political gain. Then, the Faustian bargain comes when the hell fires require your political souls to be paid. And now, you want to take it out on retirees. Well, this is -- breeds even more distrust about government is because you're hired to make decisions, you should know what the decisions of your independent council districts are. And yet, you consult with our learned statistician to create this format so you may go before the voters and say, look at us her. Most of you want to say this, the other want to say this. My opinion in this matter can be summed up what I've learned from an old beat cop years ago. What's the difference between a \$10 hooker and a \$5 hooker? Five bucks. This is a bad program, you should know your people.

>> Mayor Reed: Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor. Tax, tax, tax, tax, it seems like I've heard that word before, somewhere. Okay, just comes in the back of my mind. Sure, you've asked for taxes for BART, you got it. You asked for taxes on the high-speed rail, you got it. You can't just keep coming back continuously and asking for tax, tax, tax, tax. We ask taxes for certain school districts. Schools need money. They're going broke. And homeowners in that district pay for the schools, tax again, tax again. Mayor newsom this morning what I heard on radio might have an answer. Not a good one, but a cruel, a cruel answer, to something. He said, fire all the city employees. And then rehire them at a lower rate. There has to be -- that's not a good answer. But nonetheless, we value our city workers, we value our public servants, if you want to call them servants. We value them. And we hate to take it out on anybody. But nonetheless, if you're asking people to come in in hard times right now, you keep saying job losses and everything, you keep saying that, and yet, you ask people to come in on hard time to make sacrifices. Now, I would urge councilman Oliverio, he just said he got some answers on the survey he took. I would like to know about - more about that survey that he took. He didn't give much of a description of it. But it sounded pretty interesting to me. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Councilmember Oliverio.

>> Councilmember Oliverio: Just to be clear for anyone in the audience or anyone watching that can you go to the city Website and go to the council agenda item 3.5 would have that attached or my district 6 Website. Thank you.

>> Mayor Reed: Any other comments or questions? Nope? That concludes our work on this item. We'll now move to the next agenda item. Report of the City Manager.

>> City Manager Figone: Mr. Mayor I have no report today. Thank you.

>> Mayor Reed: Okay item 3.2 is noticed to be heard no earlier than 3:00, that's the actions related to the retirement board governance so we'll come back to that sometime after 3:00. Item 3.3, service efforts and accomplishments report 2008-2009. City Auditor Sharon Erickson is there on that one.

>> Sharon Erickson: Good afternoon. Over the last 20 years the governmental accounting standards board has been researching and advocating for this type reporting. Service efforts and accomplishments reporting applies to state and local government. The accounting standards board has been advocating this type of report to provide governmental officials and the public with information to supplement what's available in the annual financial statements. The financial statements give users a sense of government service but do not provide information on the efficiency or effectiveness of government programs. SEA reporting is intended to provide that kind of information. This report summarizes government performance through June 30th, 2009. What I'd like to do today is just walk you through a few of the pages in this report, that show you the types of information that you'll find in the report and that you might find useful in the upcoming year. First page is the index. This is the City Auditor's second annual SEA report for the City of San José. The table of contents here on page 7 shows all city departments are included in our review. Again, the report is intended to be informational. It is not intended to be a complete set of performance measures for all users. But it does provide cost workload and performance data for city services. It provides insights into service results and may raise questions. It's not intended though to thoroughly analyze those results or answer every question. The report includes background information on city revenue city spending and staffing. This is a shot of page 18 of the report that shows revenues by type, city and enterprise fund revenues over the last eight years. Another page of the report shows performance data over a number of years. This report builds on existing systems and measurement efforts. This example, page 66 of the report, summarizes expenditures and staffing for the departments in the Community and Economic Development service area including five year trends. The City Auditor's office compiles and review departmental performance data to provide reasonable assurance that the data are accurate and reliable as part of our review. We do not, however, audit or perform very detailed testing of all of that data. Here the sample page also from the neighborhood services chapter, it's page 59 of the report. It includes some key facts about the library department, comparisons to other Bay Area library systems, five year trends and expenditures, visitors, hours of operation and resident ratings of library resources. As you can see, the report includes a variety of information about the broad range of services the City of San José provides. I want to thank all of the department staff who contributed to this report. It wouldn't be possible without their support. To obtain copies, please visit our office or visit our Website, at www.sanjoseCA.gov/auditor. To obtain copies you can stop by our office or visit the website. If you have comments or suggestions please contact us at city.auditor@Sanjoseca.gov. Thank you.

>> Mayor Reed: Thank you. Great report, Sharon. It's very helpful, useful. It's good to have close at hand with some basic data and it's educational and enlightening. Is this posted on the website so anybody can access it?

>> Sharon Erickson: Yes, it is. It is posted with this agenda item on the city council website, the city agenda website, it is also on the City Auditor's Website.

>> Mayor Reed: Thank you, councilmember Constant.

>> Councilmember Constant: Thank you. I want to say thanks again for this report. I know when this came out first edition the best part about it is the fact it aggregates data. Usually we have to scrounge around to find the dozens of different reports. And I just wanted to let you know that where I found it most convenient is when I'm out in the community and they're asking questions, almost anything related to the budget or city services can be found in that document. My old version was tattered and I'm happy to have the new version. Thanks.

>> Mayor Reed: I have no request from the public to speak on this item. No other questions or comments from the council. We have a motion to accept the report. All in favor? Opposed? None opposed, thank you very much, good work, that report is accepted. Next item is the 3.4, 2009-10 mid year budget actions.

>> Jennifer Maguire: Good afternoon, Jennifer Maguire, budget director. In addition to the monitoring that we do through the bimonthly financial reports through its budget policies the city council has designated mid year as the appropriate time to perform a comprehensive review of the current year's budget and the mid year budget review document as the appropriate vehicle for consideration of any budget revisions. The mid year budget review document was released at the end of January and it complies with that council policy. It contains a comprehensive review of the status of the city's 2009-2010 operating and capital budgets and contains many recommended adjustments to ensure several funds stay in balance and are fiscally sound by year end. On an overall basis, I would characterize the city's overall budget as being in a fragile but relatively sound condition. Unfortunately, the effects of the worst economic downturn in recent history continue to negatively impact several funds, and areas of city businesses. I am using the word fragile to describe our budget condition as difficult decisions continue to be made to keep the city's funds in balance and not unexpected, the solutions are becoming extremely challenging to develop as we bring each fund back into a fiscally sound position as revenues continue to decline. I want to reflect quickly on the last 12 months. Last year at this time, at the mid year budget review the council was faced with rebalancing several funds and programs totaling \$159 million in reductions, and the elimination of over 140 positions. In June 2009 we rebalanced the General Fund once again due to an unprecedented 29% drop in our quarterly sales tax collections. In June 2009 the city council also addressed a 2009-2010 \$84 million projected shortfall in the General Fund alone eliminating 221 more positions citywide. In October, 2009, just a few months ago, as part of the annual report, we were forced to rebalance another significant shortfall in our quarterly sales tax projections. And finally in November, the city council was in the unfortunate position to again rebalance and reduce our development fee programs eliminating almost another \$4 million and 43 positions in that program area were eliminated. That brings us to today, where we have more recommendations to do further rebalancing in several city funds. And this is where we're facing a 2010-11 budget with a projected \$100 million shortfall in the General Fund, a \$17 million projected shortfall in our airport funds, and shortfalls in many of our capital programs that are supported by our construction related revenues. So the difficult decisions continue to remain. As a backdrop to the recommendations contained in the mid year report, and as the city council heard yesterday, a quick economic turn around is not expected. This slide shows the major indicators that show why our city revenues continue to remain in a negative or at best low-growth position. Our unemployment rate remains high, job losses continue, we have slow development activity, just a note here we've had 267 residential permits issued in the first half of this fiscal year, and if you look back at just two years ago we were on an annual basis getting between 2 to 3,000 permits being issued. Our airport passenger activity continues to decline with a 10.5% drop in the first half of 9-10. On a more positive note our home prices are showing some improvement but we are still below the peak of the numbers. The next slide shows our comparative performance of economically sensitive major revenues. This information was recently released as an information memorandum as a response to inquiry from Councilmember Campos in November. I think it's a very -- was a very important question that she asked and very important information to put out there. I won't go over to the slide in detail but if you just look at the far-right column you can quickly see the effects of the economic downturn in these major revenue sources. The declines are very severe and significant. The recommendations contained in the

mid year budget review report fall in several areas. In the General Fund, adjustments are recommended to offset lower revenue collections and to address three urgent expenditure needs. We are recommending implementation of vacancy savings plans in several departments to prevent personal services cost overruns due to adopted budget position placement in the fact that we have a historically low number of vacancies in the city at this time. We have adjustments recommended in several capital and special funds primarily to address lower revenue collections. There are significant impacts especially to our traffic capital program. We are recommending the elimination of nine positions, six are in the police department, five of those are related to airport related activities. We have two civil service San José redevelopment agency positions recommended for elimination. They are reimbursed by the agency. And one Public Works position, again related to airport activities. It should be noted that additional budget adjustments may be necessary before the close of the fiscal year. Moving on more specifically to the General Fund, and what we're recommending here we have categorized the adjustments into our budget problems and budget solutions. On the problem side we are recommending that we bring our General Fund revenue estimates down by a net \$6 million based on our current tracking of our collections due to the continued impact of the economy and also lower than projected activity levels in several categories as we describe in our report. We also have identified three urgent program needs and those are cost related to binding interest arbitration with the firefighters union, some costs related to our recommendation to relocate city staff out of the old Martin Luther King Jr. library which will by doing that now will be able to save about \$500,000 annually beginning next fiscal year as well as a small adjustment for labor employee relations consultant funding due to the fact that there were negotiations with nine out of our 11 bargaining units. So how do we resolve the almost \$7 million problem? We are in the unfortunate position to have to recommend that we use about \$4.5 million of our economic uncertainty reserve that was just recently established to \$10 million in the end report. Very happy that we have that economic uncertainty reserve was unhappy to use it now because we've got sales tax, unknown sales tax numbers coming in March and again in June and not sure how those are going to land since they've been very volatile. So with that if we do have any more one time revenues that do surface during the next of this fiscal year we would strongly urge the council to replenish that for further economic uncertainty this year. We have once again scrubbed our expenditure side of the General Fund and we're able to recommend about \$2.2 million worth of adjustments and to round out the solutions we have about -- very small \$265,000 worth of net new revenue adjustments. We also have brought forward in this report a number of grants and reimbursements that have a net-zero impact on the General Fund. In our special funds, we have adjustments that are recommended to address more severe than anticipated economic impacts, some expenditure needs or to prepare for 10-11 budget process. We have significant budget actions recommended in four areas. In the airport operating funds in order to get a head start on a \$17 million shortfall projected for 10-11 we've made some recommendations related to airport staffing as I mentioned earlier and position in the Public Works department. In the community facilities revenue fund or the Hayes mansion, where we fund the Hayes mansion costs, we're having to rebalance that fund due to lower than estimated revenues to date. In our convention and cultural affairs fund, we need to rebalance that fund due to some overages in the nonpersonal equipment category. That fund is not completely rebalanced right now. We're working with Team San José on the remaining solutions. And in our general purpose parking fund and for the first time that I can remember we need to rebalance that fund due to monthly and visitor parking revenues tracking approximately \$1.5 million below our estimated levels. In the capital funds that we have also some adjustments there. Mostly to address a downturn in development activity. I do need to note that these lower -- these continued lower collection levels which I had just -- one could not imagine how low these could go, they will be significantly impacting our development of our five-year capital improvement program that we will be bringing forward to the council late April. In the traffic capital program, we are again faced with significantly rebalance -- significant rebalancing actions as the taxes that support our transportation infrastructure have continued to fall dramatically. Between the two taxes the construction excise tax and the building and structure construction tax we are projected to collect only \$9.5 million which compares to \$23 million two years ago. So that's a drop of 60% in those revenues. Revenue in our other capital funds, and the funds are listed there on the slide, are not faring well either. We are recommending to rebalance those funds and bring those estimates down. Most of this is all related to the downturn in the development activity. There are other adjustments in this report. A handful of them to recognize new funding grants, add a limited number of new projects, and technical adjustments in other funds. As with the special funds, our capital funds remain on careful watch. To conclude, as you're all very aware, we are -- we have a difficult and challenging budget work ahead with

the activities listed on this slide. They're scheduled to occur over the next four months. We have staff here for questions if anybody has -- if you'd like to ask any specific questions on any item in the report. Thank you.

>> Mayor Reed: Thank you. I think there will be a few questions. I'd like to start by thanking the manager, City Manager and our -- all of our departments and everybody who's been working this budget. Because we're making adjustments of about 1% of the General Fund here at mid year. And I'm really grateful that we don't have a big gaping hole as mid year to fill like many other cities do. So the staff has had great discipline, the council has had great discipline on how we spend our money during this budget and I think that's a stellar accomplishment that staff needs to be congratulated for. Even though we're making adjustments they're relative small, and that's a really good thing. If you've been watching news from Los Angeles, they're looking at cutting a thousand jobs in mid year because they don't have the money. I'm grateful that we're not in that situation. But we certainly have some challenges and I'm pleased that we have a reserve that we can use to plug a little bit of this hole, this 1% hole. It's still serious amounts of money. And it's really important to replenish that reserve, the economic uncertainty reserve, with new revenues as they come in so that we're always in a place that we can respond to these kinds of shortfalls without having to take some drastic actions. With that I just wanted to again thank everybody for getting us halfway through the year in relatively good shape considering the difficulties of the times that we're in. I will say that there are people that think things are going to get better this year. I happen to be one of them. I think our economy is going to get better and we're going to start seeing a different trend in the revenues. It's not saying they're going to get back to where they were but I hope they're going to stop going down and my guess is sales tax will be the first one to show a positive trend and we could certainly use a little good news. But it's quarters away. When I was in Washington a couple of months ago I went to the Brookings Institute with some other mayors and they just looked at revenues in aggregate for cities around the country. And it's about 18 months to 24 months after the national economy comes out of a recession before local revenues start to improve. So I'm not sure when the national economy technically came out of recession, but we're still in it for our own revenues as can you see from these revenues that are going down. But it will get better and we have some great opportunities facing us that will help it get better. We talked a lot yesterday about the need to work at the speed of business. And to take advantage of opportunities that are coming our way with companies that want to create jobs, make investments, and, yes, pay taxes in San José. And there are those opportunities. In fact, I met with a company that wants to put a thousand people in one of our vacant buildings downtown. That would be great. And the wonderful thing is, they're not the only company interested. There are actually several companies that are interested in moving into downtown and part of my meeting with them was to assure them that we could work at the speed of business, that we could do what we've done in the past successfully. So my question is knowing that our staff is pretty much maxed out in the planning, building and Public Works from time to time, if we have surge capacity to be able to work at the speed of business if we get multiple opportunities at one time. So we have a couple hundred thousand dollars in the economic development predevelopment activities fund. And I'd like to know whether or not we can use those funds to backfill in planning and Public Works or building, wherever the gaps may be, when we have multiple, major events happening.

>> Joe Horwedel: Thank you, Mr. Mayor and staff is very appreciative about the comments how we've been operating and I any meeting with that company today helps set a good foundation where we can format. We are a bit stretched and I think those economic funds that have been set aside do provide us a bit of a pool to draw upon that, as we see something coming forward, that we can create some overstrength positions on a short term basis. We are also looking at opportunities to essentially rent staff back from the staff we were forced to lay off to bring them back for short durations and return them back to what they're working on today and also looking at some retiree rehires to be able to be scalable on the short term. It is one of the things we're also looking at on the longer term basis that for the different classes that we have to operate how we will do that. You know how fast we can bring people back are they still available or have they taken jobs in other industries that they may not come back. And so we're also even looking at what it would take to do a recruitment. So we're looking at it literally what it would take to have somebody show up tomorrow, what it would take to have somebody here next month and then two months down the road.

>> Mayor Reed: Some of those questions we'll take up in the regular budget process for the next fiscal year. So we've got a couple hundred thousand dollars to work with for the next fiscal year.

>> Joe Horwedel: Yes.

>> Mayor Reed: I just want to make sure that everybody is comfortable that that money could be used for that and we don't need any special actions for this fiscal year.

>> Joe Horwedel: Works fine.

>> Mayor Reed: Keep working at the speed of business. I keep promising and you keep doing it and we have a lot of opportunities. Councilmember Constant.

>> Councilmember Constant: Thank you. My first question is on the sales tax figures. We know we still don't have the most current information. You mentioned March and June being when we see those updates. Just for the benefit of those who are watching and to remind us, what is our actual lag time? When you see the end of quarter 1, when do we see the numbers?

>> Jennifer Maguire: That's a good question. The lag time is for the sales activity that occurred between October and December of calendar year 2009. We will see the results of that about the third week in March, 2010, for example. So there's about a three-month lag from the time that the -- that particular quarter ends.

>> Councilmember Constant: Okay, thanks. So we still have at least two periods that we'll get information from and then the third obviously we'll get during next fiscal year?

>> Jennifer Maguire: And actually though that does get accrued back to the fiscal year of 9-10 so when we had to bring back budget adjustments in the end report it was based on the prior year's quarter but we do our best guess of what that quarter will do and hopefully the adjustments will be minor.

>> Councilmember Constant: Okay and then I just wanted to point out from the ah appendix on the finance report on page 1 and this is something we discussed in public safety finance and strategic support committee, if you look at the graph on the top of the page it's the General Fund comparison at cash balances. It's really telling there where our cash flow is and when we first saw the dip in Public Safety, we talked about what is this, and why. And the initial answer was, well, we're doing some of the prefunding in the retiree contributions, and if you look at the previous year you can see how it rebounds. But what's important to note is, it didn't rebound. It continued to drop and you can see that we're trailing in cash balances significantly from not only last year but all years. And it's a huge jump and it's one of the areas that I have my greatest concern is really that cash balance. We talk about it every month at the public safety finance and strategic support committee and that I know staff is on top of it and we've had some offline discussions but I just want to make sure everyone really pays attention to that. Because I think that's one of the key charts as we go forward because the cash flow is going to be something that we have to be ever mindful of.

>> Jennifer Maguire: And if I might add the City Manager the finance director and myself are equally concerned about the cash balance. A lot of it is to do with the prepayment but also our lower revenue collections with our sales tax being negative in the 20% range it's having an effect on our cash balance. The finance director and myself are meeting as we develop our five year forecast that is to be released at the end of this month to look at some different ways that might be able to structure the prepayment, we might get the full discount but to try to get our cash in a better position as we move into 10-11.

>> Councilmember Constant: Thank you, I appreciate all the attention oto that, thanks.

>> Mayor Reed: I want to go back to that chart on cash balances, and certainly can't attribute it all to the prepayment of retirement contributions, because averaged out over the year, it would have only made it \$8 million a month difference, so we'd still be trailing below, substantially below, right, even if we hadn't made it?

>> Jennifer Maguire: You're correct, it's a lot due to our revenue that are slow to come in.

>> Mayor Reed: Okay, Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to echo your concerns about keeping the shop open and being ready for anyone who wants to plant their stake in our city. So whatever we need to do to make that happen, I'm 100% for. I do want to thank all of you for the fine work you're doing. It's got to be difficult at best. I want to be sure I understood correctly. We still don't even have the Christmas figures?

>> Jennifer Maguire: That's correct. We do not have the Christmas --

>> Councilmember Pyle: What is their problem? I don't understand. They get sales tax, they send it in. What's -- where's the beef?

>> Jennifer Maguire: It's the state board of equalization. I don't have an answer for you. Every city in the state gets their sales tax about a three-month lag time.

>> Councilmember Pyle: That's certainly not the speed of business is it?

>> Jennifer Maguire: No, it makes it very difficult to predict such a large revenue source.

>> Councilmember Pyle: Okay, then on page 9 I think the mayor already answered my question in reference to the moneys that were put into the -- where are we now? We had to use some of the 104 -- the moneys to put into the retirement fund, I believe that's -- I thought it was on page 9. It's okay. I wanted to look also on page 8, in reference to the real estate sales, it would -- those would indicate to me, too, that there is going to be somewhat of a rosier picture because in my neighborhood, for example, the prices are going up. I don't know how much that's happening in other parts of the city but that's encouraging when you look at the median price however, it just doesn't seem to jibe. I don't know why that is.

>> Jennifer Maguire: But it has improved the last couple of months, the median price. I think from the translation into our construction and conveyance tax revenues which is the property turnover we may have seen the bottom in that falloff in that revenue resource, so we are hopeful, but a very cautious hope.

>> Councilmember Pyle: Right. The Realtor I had been in touch with said their sales were going up, that's always a good sign. That's it for me, thank you very much for your good work.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. It's been said but I just want to talk about that planning staff being able to roll up with the right opportunity. I think council at the budget time needs to consider making more of those positions in planning, General Fund dependent and unfortunately that means you have to trade off something else. But you know as they are a fee dependent department it ebbs and flows their staff so much which makes it extremely difficult to sort of make a career at it if you think you're going to get tossed out every other time so you got go to other departments like environmental services or housing, to try to latch on where there are secure sources of revenue, and I think as much as Joe or Laurel would be able to try to get staff to come back they may not be able to come back. And I think, you know, if we don't have that great opportunity, then maybe they can start working on some of those ordinances that we might want to get done over time that seem to be backlogged. That's part of the budget process. Jennifer Maguire as always thank you. I remember a few months back a speaker came up and lambasted the city government from keeping too much money in reserve, economic uncertainty reserve of \$10 million. Had we done what they had spoken about spending it all, what would we have done today, what would you have come to the council with?

>> Jennifer Maguire: I truly believe we would have been in the very unfortunate position to have had to do a lot of layoffs at midyear, and we would have had to do layoffs in the end report, as well, to balance the sales tax falloff.

>> Councilmember Oliverio: Okay, and then the report also still points out the liability of the Hayes mansion of \$5.9 million a year, which I would point out is about 50 new police officers or 40 new police officers and opening up every branch library in the entire city on a Sunday, so there is the tradeoff. I hope we get to managing that. I saw the transportation and capital funds are down which paves our roads, and I would just say that sometimes it's a council policy we exempt affordable housing from paying those fees therefore there's no revenue coming in and during this market that is some of the only housing that is getting built so it is problematic for our roads our transportation capital budget. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I had a question, Jennifer, first about page 16, which relates to T.O.T. revenues, and by the way, thank you for a really thorough report. It's very easy to get through and understand where things are when you need to find them, and I really appreciate the great work that your team has done and the way that you've pulled everything together. When we look at T.O.T. revenues on page 16, I'm sorry of the memo from City Manager, I understand they're tracking 29% below for the -- from the prior year. We've already assumed there's going to be a 14% decline. My question is, is there any likelihood that we're going to actually meet that very modest target of a 14% decline, or are we expecting -- I note that the T.O.T. revenue doesn't come in evenly over the years so I'm trying to figure out if we expect a significant uptick in the next six months or are we going to track well below the negative 14%?

>> Jennifer Maguire: It's one of our many revenues that are on careful watch. The 29% decline I might note was compared to a relatively speaking stronger first half last fiscal year. So it's hard to compare it, you know, that decline compared to a relatively strong quarter. But when we projected out for the whole year we think we'll be around 14% down. But if adjustments are needed we will certainly bring those back to the council before the close of the fiscal year. But you're right, they don't come in -- they do not come in

evenly so again it's hard to watch but comparing collections for the first half of fiscal year to the last half of the fiscal year is a little misleading because we hadn't started to really see the dropoff.

>> Councilmember Liccardo: Okay, thank you. And then I had a conversation this morning with Ed Shikada and Ed I appreciate you taking the time to talk. And specifically it was about I guess to identify the item in the budget, it would be page 3, III-30 where the capital funds from the central service yard are discussed in various items there. I understand there we've got about \$870,000 in savings from the old main yard in Japantown. The question I have, and I doubt you have an answer this quickly but I thought I should ask it is whether first all of that \$872,000 in savings is already encumbered in other capital projects and secondly can any of that be spent at the old main yard in Japantown for very minor capital improvements along the lines of simply installing the curb cut so that the local businesses could use that concrete pad for a parking to serve their retail?

>> Ed Shikada: Thank you councilmember Ed Shikada chief deputy City Manager. Had the opportunity to have brief interaction with the budget office as well as some of the departments. I think it's certainly something we'd like to take a look at. One basic understanding I think that we'd want to make clear is the funds that are being transferred are really not savings. It is simply a deferral of expenditure given the fact it was first set out for the development of the Japantown yard given the state of economy that expenditure is not needed in the near term so we're simply shifting to other uses. Part of the plan here relates to debt service on already constructed improvements at the central service yard. So the service yard C&C fund really is strained so we'd want to take a close look at any options there but also, given -- I know the community interest in parking use to look a little closer at options for funding that as well as well as ultimately taking a look at the cost benefit of that type of use. So we'd be happy to follow up and provide some additional information to your office and ultimately come back to council based on that analysis.

>> Councilmember Liccardo: Thanks Ed, I appreciate that. And then finally a question, Jim Ortbal I'm sorry to put you on the spot here but I had a question about page 11 relating to the \$1.2 million drop in parking citation revenue. And when I looked at the corresponding page back in the budget it appears that some of that may relate to just ramp-up costs in terms of getting enough staff trained to be out there, issuing parking citations and so forth. But some of it just seems like we've got a general drop in parking activity anyway because of the economy. Is there, I'm trying to understand, is the shortfall the 1.2 million more because the activity drop out there on the streets, or because we're unable to collect because people are having a hard time paying?

>> Councilmember Liccardo, Jim Ortbal from the Department of Transportation. It's a combination of factors. Our collection rate this year is down about 4.5% from what it's been in years past. I would imagine the economy has something to do with that. Overall parking activity in our downtown is down. There is more available space in our garages and on our streets, so our issuance is down to a certain extent. We did bring on transferred officers from the airport. We went through training activities early in the year and we did get some new staffing as well in terms of filled vacancies, so we had training activities going on so we have a variety of different things that are going into impacting our parking fine revenues this year.

>> Councilmember Liccardo: Do we expect, and I know that there have been a lot of interest for additional parking monitoring out in the neighborhoods, in particular, where we often have a lot of complaints. And do we expect that there will be, as those folks come online, that there will be additional activity in the next couple quarters?

>> Councilmember, in terms of our ability to kind of support neighborhood activities, I think we are providing those levels of services, we're supporting the permit parking zones and the street sweeping zones, so I feel our level of service in those areas is good. Our ability to patrol in those areas has been effective. I'd be happy to talk with you if there are specific neighborhoods or districts that feel like they would need additional service and patrol, we certainly can do that. Overall, I think the issues that I mentioned originally kind of were the main cause for the fine revenues dropping but I think our coverage of neighborhood areas, we can meet that with our existing staffing level.

>> Councilmember Liccardo: Okay, so you don't think that at this point there's a gap out there in terms of --

>> I don't think so. If there are specific areas where you'd like to talk further about, you've heard questions from residents or neighborhoods I'd be happy to work with you on that.

>> Councilmember Liccardo: Okay, great. I -- yeah, I'm just trying to understand if this is -- because I know that we're all concerned about parking fines and I know there are a lot of -- I know that there are a lot of proposals out there, including one that I've been pushing that have some impacts on that revenue

and so I know we're all watching it. And I'm just trying to get a sense or gauge of whether we expect that number to be increasing or not.

>> And I think we need to be clear on distinguishing between the two revenue sources. What we were just conversing about were parking fines and citations, a General Fund revenue.

>> Councilmember Liccardo: Okay.

>> From citations issued. The incentive program I think away discussed yesterday relates to revenues that are from our garages and the rental and lease of monthly parking space and visitor revenues in our garages. So a little bit of --

>> Councilmember Liccardo: Forgive me for confusing the two funds. Thank you.

>> You're welcome.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks, I forgot one comment and that's on page 4, I think we -- I know Pierluigi and I talk about this often but I think it's worth noting that the Hayes mansion is tracking \$3.8 million below our projections, and our projections were a loss to start with. And I think that we have to continue to point things like that out, when they're not essential city services or necessarily related to economic development. That's on track even with operational cost controls, it's on track to end \$1.6 million below the budgeted estimates. And I think as we go forward, that's an area where we really, really have to concentrate on these areas that aren't either essential services or directly related to economic development.

>> Mayor Reed: Other comments or questions? I have a request from the public to speak on this item, one card, Mr. Wall.

>> David Wall: Your budget forecasts are very nice work done by our budget director. It does not address redundant systems within the city itself such as Mr. Mayor your entire senior staff. The city charter is quite clear and explicit that the City Manager has control over city operations. So why do you have a budget director, and we have our honorable budget director sitting off to my left? In addition to the state of the economy, no discussion even yesterday was predicated on the state of the European economies and their dramatic effect upon the economy of the United States. Specifically, Portugal, Italy, Greece, and Spain. Right now the European financial markets are trying to stabilize these concerns. Part of this stabilization will require intervention from the United States. This will in turn cause a drying up of any stimulus moneys projected in the near future. This may be the tipping point for the collapse of commercial real estate which then brings to the last discussion why has not at any time all these redevelopment agency high density projects been discussed in relation to their debt service, and at what point are they going to be unable to maintain their debt service causing financial collapse to the City of San José?

>> Mayor Reed: That includes the public testimony. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just wanted to add my comments to thank Jennifer Maguire and the budget team and all the departments that work so hard to get this ready. I think it's really timely after we've had our neighborhood budget priority setting session, the community survey and the economic development strategy, I think we're positioned well to go into our budget study session. I'm concerned. I think what we have today is a snapshot of what is to come, and I think as has been said we need to streamline and find efficiencies. But I'm not sure we're going to be able to streamline our way out of this \$100 million deficit for the next fiscal year. We're in the service industry and I know as I went through the community process looking at what the community felt about how we work, I was surprised to learn that we had 550 discrete programs in the base budget. And I wondered, you know, how much redundancy and overlap there might be. And I know that the community gave us a lot of feedback on priorities, but it concerns me when I see things that seem to be similar on list 1, 2, 3 and 4 that possibly there is some redundancy there. The Hayes mansion is already mentioned. I think we have to look at anything where we are subsidizing it and that money could be used to support services that our constituents are depending on. I'm also, in looking at this, had noticed an area that I think, you know, I think that we need to look at every area in here but one area that possibly we want to look at how we're spending the money in terms of increases and that's workmen's compensation and that's in section 1 page 32, \$16 million in worker's compensation fees. And I'm just wondering if we are doing enough in terms of the prevention side of it to help us reduce that. I know that the private sector has to do -- institute those kinds of programs and I'm not sure where we are with that but I'd like to see -- like to hear us discuss that. And it also mentioned in a past memo that I presented on the catalyst fund I had asked some questions to be presented before we discuss the budget in terms of the money that we have put

into venture capital arena. So I'm still waiting to hear back on the answers to my questions. So I think we need to look at every aspect in terms of budget if we are even going to contemplate going out to our taxpayers to ask them to pay more. I think we need need to look at everywhere where we can seek efficiencies. Thank you.

>> Mayor Reed: Anyone else? I think that concludes the council questions. I think we need a motion to approve the mid year report.

>> Motion to approve.

>> Mayor Reed: We have a motion to approve by Councilmember Constant. All in favor opposed, none opposed, mid year report's approved. Practically time to do the next one. We will now go back to item 3.2, which was noticed not to be before 3:00, it's slightly after 3:00 so we'll take up the actions related to the board governance for the federated city employees retirement system and police and fire retirement system board.

Take a minute for the staff to take their positions. And I believe the City Manager will start this presentation.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. This issue of retirement board governance has been a long journey. We've been working at this for about a year, and so I wanted to take a little bit of time to frame the discussion and then turn it over to staff who will make presentation on our staff report. As council may recall, the issue of board governance was considered as a result of audit of retirement services travel expenses prepared by the City Auditor's office in September of 2008. And after this audit, the city council provided direction to incorporate into a separate review of boards and commissions, recommendations on restructuring the retirement boards to add independent board members with financial and investment expertise. After that direction, the administration hired Cortex, the consulting firm who made several recommendations on the board governance for the retirement plans. Now, there are many and numerous stakeholders interested in this issue which include retirees, retiree associations, employees, union representatives and the public. Numerous stakeholder meetings have been held, and primarily retiree representatives and union representatives have been the key participants. This issue is a controversial topic. Some have indicated there is nothing wrong with the current retirement board structure. Others have indicated that this is a power grab by the City Manager or the city council. And I guarantee you that this is far from the truth, and I can assure you that it is not the case. What is the case is that it is important to have a well managed and well funded retirement plan to ensure that the plans provide pension and pension benefits for retirees now and into the future. After careful consideration and review of the recommendations provided by Cortex as well as consideration of feedback provided by stakeholders, the administration is recommending changes to the composition of the retirement boards. This includes replacing several board members with public members who have specific education and experience and are independent of the city. I do want to emphasize that the recommendations do not make any changes to the employee and retiree representatives on the board. It is important that we have experienced board members. The mayor and several councilmembers have issued a memorandum with recommendations that are different from the administration's recommendations. However, my read of the mayor's memo is that it does draw upon the staff's recommendations in formulating a recommendation to the council. One area of the memo which I have mentioned to the mayor that I do want to comment on is the reference to a process for handling board dissatisfaction with the director of retirement services. My request of the council is, as you discuss this recommendation that you be clear on your intent, so that the attorney can consider your intent in drafting any follow-up ordinance. My concern is that the board should report any of -- any concerns related to the director of retirement, directly to me. And my concern is that the council should not inadvertently create a forum or enable end-runs around the City Manager regarding matters that involve my department head. Nor create a forum for airing personnel matters in front of the council. Throughout our work, our goal has been to retain the council's authority and discretion to appoint the majority of the members of each retirement board, and replace some board members with public members who possess specific relevant education and experience and who are independent of the city. In that regard you have received our best professional advice with our full knowledge and appreciation that at the end of the day this is your policy decision. I would like to turn it over to staff and in doing so I would like to thank Alex Gurza, Ariselli Rodriguez and Russell Crosby who have worked tirelessly to provide you their best professional work despite significant pressure and criticism at times they have kept their shoulder to the wheel and I greatly appreciate it and with that Alex will take you briefly through our report which again has served I believe as a springboard for the recommendations from the mayor and other councilmembers. Alex.

>> Alex Gurza: Thank you mayor, members of the city council, Alex Gurza, director of employee relations. As the City Manager indicated, with me is Aracely Rodriguez, from my staff, and also director of retirement service Russell Crosby who is able to answer any questions that he may be able to answer for you. We do have a presentation where we'll go through a bit of the background on the board governance process and summarize the administration's recommendations. One of the questions that's come up is why look at board governance? Governance of retirement systems impacts all aspects of the board decisions. Including significantly the contribution rates paid by employees in the city, the investment policies for \$3.5 billion combined in both plans and pension assets, they make decisions on disability retirements. The two plans have grown significantly over the years and affect thousands of employees and retirees and taxpayers as well. The boards are required to deal with very complex issues and need considerable expertise. And looking at the board governance model is critical to the success of the plans. Why now is another question that's come up. The board governance only being looked at because of the market losses which have been experienced throughout California and the rest of the country, or is it a good idea to look at board governance periodically? And we would say that the latter is, their best practice is to review governance on a periodic basis. The issues have become very complex that the boards have responsibilities to deal with. And Cortex which is the consultant that was hired did not focus on the economic environment when they made their recommendations in terms of board governance. This is a chart that's in our memo, which on one slide summarizes the current structure of both plans. As you know we have two retirement plans, both have seven members, and the column on the right is to indicate that the -- currently, the city council appoints and has discretion to appoint every member of both retirement plans. That is pursuant to the city charter, and that is one issue that has come up, that if that were to change, where for example, we were to allow employees and retirees to directly appoint their representatives, that would require a change in the city charter. Both boards have one thing in common, in that they both have one retiree and two employees on each board, two councilmembers on each board, also one civil service commissioner member, and then the federated plan is the only plan that has a public member that has required expertise. Very quickly as you know and as the City Manager indicated we went through quite a bit of stakeholder outreach. The first report came to you in June of last year. You directed us to do stakeholder outreach, was conducted in August. In October we provided an information memo summarizing that issue along with providing the revised Cortex report. We also had additional stakeholder meetings in December of 2009, and pursuant to the direction of the Rules Committee, had additional stakeholder meetings with bargaining units and retirees association in January. One of the things that we noted in the Cortex report is they provided what we thought was helpful guidance in looking at a structure of a retirement board because clearly there are many different alternative structures. And they indicated that the composition of a retirement board must reflect the relative risk-reward exposure of active members, retirees and taxpayers. And in a situation where the risks and rewards are shared equally, it may be appropriate to have equal representation on a board. However where one party bears a disproportionate share of the risk involved they recommend that that entity have the majority represented on the board. And in the case of our plans, I think it's undisputed that it is the taxpayers who hold a disproportionate share of the risk in our pension plans. So we use that to recommend to the council two key objectives for your consideration in evaluating the different structures. Essentially number one is to retain council authority and discretion to appoint the majority of the members on each retirement board. So essentially is based on the slide we showed you before. And we use the word discretion in order to indicate that not only the authority to appoint but also the discretion to appoint among choices, among applicants for example so the council is able to choose among the applicants for the positions on the board.

Secondly, our recommended key objective is to have people on the board by replacing the current ones the council appoints, for example councilmembers, civil service commissioner et cetera, with members of the public who meet certain eligibility requirements, education and experience that would serve them well as trustees on the board. One of the things we mentioned is the growth in complexity in managing our retirement plans. So to give you a sense of that, we went back as far back as we could find records, where we had numbers for both systems in the same year, and that is 1972. And if you look at the yellow column in the middle back then we had 2700 combined active employees in both plans. And only 286 retirees managing a total of \$49 million. We flash-forward to June 30th of 2009, and you can see the incredible increase in not only the number of employees and retirees, but the responsibility to manage \$3.5 billion of assets. It wasn't the purpose of doing this slide but when we did this slide we noted the relationship between the number of the ratio of employees to retirees. So for example, if you looked at

1972, there was one active -- there was 9.41 active employees for every retiree. If you do the same math in 2009, there is now only 1.35 active employees for every retiree. And as we think about the demographics moving forward with the baby boomers retiring we think you're going to see, continuing to see that trend. That \$3.5 billion that I mentioned there, that is of June 30th, 2009 which is the valuation date that both plans use. One of the things that's come up is the plans have earned money since then, and one of the issues that has come up is well, since it's earned money doesn't that make the whole issue with the loss go away? So I have asked Russell to briefly mention, describe that impact of the gains in a certain moment in time.

>> And actually, since the ending of the fiscal year through December 31st, both plans have done quite well. The problem, though, is that the target is really a moving target. So the easiest way to see this or to understand it is to go back to fiscal 2007 which was the last positive year for both plans. If you look at just police and fire, the assets that year were \$2.7 billion. The following fiscal year \$2.6 billion. The following fiscal year which was '09 this year \$2 billion. Now those have grown as of December 31st to \$2.39 or call it \$2.4 billion. Unfortunately, in that same two and a half year period, the real target moved from being 2.736 or \$2.7 billion to \$3.3 billion so if essence the plan has fallen behind its own actuarial assumption by almost \$900 million during that period, actually more than 900, 928 million. The story is similar on federated. Where at the end of fiscal '07 there was 1.9 billion, 1.8 billion at the end of fiscal '08 1.4 billion at the end of '09 back up to 1.7 billion at the end of December of most recently, but unfortunately, at an assumed growth rate of 8.25% the plan should have, from that 19 -- from that 2007 base, the plan should have \$2.3 billion, or \$585 million more than what it's got. So between the two plans you're still looking at, although the growth has been very exceptional during the last six months, it doesn't make a dent in the problem.

>> Alex Gurza: In looking at the relative cost-sharing, it's important -- we talked about the risk and with the relative risk-reward. We wanted to briefly summarize what the cost-split between the employees and the city is for retirement benefits. There is something called the normal cost and that is amount that is set to pay for every year of service as employees earn that year of service. And that is set by a ratio of what's 8 to 3. So what that means is for every \$3 the employees put in, the city puts in 8, so almost three times as much. That is set forth in the city charter. When an unfunded pension liability is created, however, the city is 100% responsible for that. And that is set forth in the municipal code. Unfunded liabilities can be created by a variety of things, one would be when the plan earns less than assumed, or for example, when a benefit is put in place that applies to all the years of service that an employee has already worked. Retiree health care and dental care I wanted to point out has a different cost sharing. Retiree health care is shared 50-50 between employees and the city and dental approximately 75-25. One of the issues that seems to come up persistently is, issue of whether the City of San José ever had what's called a contribution rate holiday. Where things were doing so well, that the city did not have to have -- put any money into the plan. That is not the case. PERS had years, the state Cal PERS system did have years where it was superfunded. The city's rate however has never been zero. There's always been a contribution rate even when times were good. Very briefly, so what does the board decide on? They decide on various complex issues. Actuarial assumptions, things like how much is the investment return assumption, how much will the plan earn? Demographic assumptions which means things like how long will people live, what raises are going to be, many different types of demographic assumptions. Smoothing and amortization periods, the boards must decide things like that. In the area of investments, they decide on the asset allocation, risk return parameters, investment structure, money manager selection, among others. As well as the boards decide on disability retirement applications. So what are the impacts of these decisions? The decision the boards make can increase or decrease the city contribution rates. They can increase or decrease the employee contribution rates. Things like smoothing periods depending on how long they are can create what we call an intergenerational transfer of costs, moving them out to future employees and future taxpayers. And also, the impacts of disability retirements. As one brief example, wanted to demonstrate the impact of a change in the assumed rate of return. So if a board were to lower the assumed rate of return, it actually causes an increase in the city contribution and an increase in the employee contribution. However, when earnings don't meet the assumptions, it creates an unfunded pension liability that the city and taxpayers are 100% responsible for. So for example, if the assumed rate of return is at 8% net which is the net rate of return in years that it earns less, that impact is on the city because the city is responsible for 100% of that unfunded pension liability. We show in a graphical way to demonstrate this. Now what this chart is from a actuarial report from the police and fire department retirement plan, and these are just projections so I want to emphasize

that. But this was done to demonstrate what the contribution rates could be over the next several years in the police and fire plan. You'll see the top line starts to go up significantly. That is the city's contribution rates. So that you can see, by fiscal year 13-14, the City's contribution rates could be as high as 46% of payroll. And even on updated numbers it still looks like we may hit those rates. And I want to point out that does not include the City's portion of retiree health care contributions. You'll notice the bottom line is employees. And you see that the employee rate is shown to stay consistent. That doesn't mean that employees' contribution rates may not go up for other reasons but this primarily shows the impact of the losses in the plans during the last valuation period. Other things for example, like a change in assumption, in assumptions, would cause the employee's contribution rates to go up. But the real sort of Matterhorn chart is the impact on the City's contribution rates. Briefly, again, now getting into the recommendations, this again is where we start from, and again, as the City Manager indicated is very important to emphasize that the city administration's recommendations do not include changing at all the makeup of the board in the sense of the number of retirees and employees on each board. We did however in our memo want to point out that there are many alternatives to board structure. There are many different sizes and compositions that are available. Clearly, the Cortex report was one recommendation. Our staff report was others, but there are even other alternatives. We in our memo however included two alternatives for council review. This one was simply saying that, if the city were to want to have all members of the boards be public members, that weren't member -- that weren't actually employees or city council members for the city, all independent, that was one option. We are not recommending that option but we did want to include that as a possibility, which further reduces potential conflicts of interest. We also included policy alternative B. This has been commonly referred to over the time we've been meeting with stakeholders as a 3-3-1 model. This is something that we have come to learn is common in private sector plans where risk is more equally shared than in our plans. The reason it's called 3-3-1, if you have a seven-member board, three people are picked by sort of the employees and retirees, three are picked by the employer, and those six get together and pick the seventh. So again, you see it as where it's a more equally shared situation, the six pick the seventh. Because we wanted to recommend something as an alternative that the council could implement without requiring a change in the city charter this was a variation on the 3-3-1. Since by charter, the six could not appoint the seventh, but the sixth could recommend to the council, make a recommendation on that seventh member. So that's what you'll see here on that bottom chart, a public member where the applicants are first interviewed by the board, and in our recommendation, with all the candidates being forwarded to the city council for your consideration but with the benefit of having the recommendation of the other six. You will note that we did recommend in that alternative a one-year term which is a shorter term if the council in any way is reducing its discretion about that appointment to be able to have a one year to see to make sure that that trustee is working out.

Now, we did a survey of retirement boards. One of the criticisms that was received from the Cortex report is that Cortex looked at a plan in Canada and plans in other parts of the country. So we did a survey that we had provided to the council of California plans. And you'll notice, looking at the column called board size, that it varies. You have from as large of boards as 13 to 5 in Fresno. I want to point out that the first four, prior to San José, are plans that encompass all employees in the plans, public safety, and non. So to give you a sense of size, Cal PERS as you know is extremely large. They have 1.1 million active and inactive members and 500,000 retirees. It's quite a large pension plan. But they have one board for all public safety and non. The 1937 act counties as well, and San Diego as well. In San Francisco, one board for all employees. Whereas, San José, Los Angeles, Fresno have two boards, one for public safety and one for non. It's difficult to look at and draw comparisons but here in one easy chart we wanted to show what percentage on each board were employees and retirees versus what were the percentage of ones appointed by the employer, the governing body or what's called ex officio members. Let me briefly explain that. For example, in the 1937 net counties, one board member has to be whatever the county treasurer is. So that's what we mean by ex officio member. So you'll see there that in almost all cases, except for Fresno, which has somewhat of a different model, the majority are employer or ex officio members. So in looking at the averages at the bottom, 55% of the people on the boards are employer, ex officio members. So what does that indicate? That the majority are picked by either the employer, or hold a certain position, whether it be like I've indicated, a treasurer of the county, as an example. So moving to the city administration's recommendations, there were several recommendations that Cortex made and we separated it into a two-phased approach. Things that the city council could implement without a charter change, and it could implement it now. Among other things that we think need further

consideration and study that we would put in a phase 2. So in phase 1, again, our recommendation, and we noted it in red there, is no change to the retiree and employee representation on each board and our recommendation by the way is, this applies to both boards. And then, to have four public members which would be created by replacing as I indicated before the city council members on each board, the city administration representative on the police and fire retirement board plan and the city commissioner on each board. The federated board currently has a public member so that position would stay and each would have four-year terms and they would each -- they would all be appointed by the city council. One of the things that Cortex indicated is the need for experience and qualifications. So we put details around those recommendations and so we're going to -- they're in our memo, on page 6 of the supplemental, but we're going to put it on the screen so you can see it all in one place. So here, what you see is our recommendations on the first two boxes, or I know it's small print there but it is on page 6 of the supplemental memo which is available linked onto the agenda. Is education which is a college degree, as you see there in finance, economics, business or another relevant field of study and then experience. We took the approach of trying to do it like the minimum qualifications for a job. All right? So if you apply for a job it has an education requirement and it has an experience requirement. And our recommendation is to be specific so it's clear whether or not someone meets the qualifications or not. So we were recommending initially we recommended 15 years, and we had revised it to say 15 years would be preferred but not less than ten and then we indicated the fields of study which also would include a professor, for example, somebody from the Bay Area, many excellent Bay Area universities started with San José State and all the universities in the Bay Area may be also a good opportunity to get people with experience. They don't all have to be out in business. Then the next area is, what makes someone independent or free of conflicts of interest? So again we tried to define that as much as possible to be independent of the city organization. And so we specified that. The last part in there is the residency requirement. One of the things that we considered is whether there should be any limit whatsoever. So we did at first consider not recommending any particular residency requirement. But we understood a concern if somebody were to be flying in from out of state, for example, not be able to get to the meetings. And so we settled on 90 miles. And the reason for that is trying to encompass the wealth of education, experience and people that live in the wider Bay Area. So that's how we came up with the 90 miles. One of the things we realize is by increasing the education and experience requirements we would want to cast as broad a net as possible to find people for the council's consideration that meet that criteria. The next is, we had to specify things like how long would the term be, would they be paid, how would they be selected? That is on page 7 of the supplemental memorandum, and then we're also going to show that on one slide. Again, apologize for the small print. But in our administration's recommendation we recommend the four year terms for the public members and again all of these apply to the public members. The issue of being paid, there are something boards, mostly in the private sector, that pay their board members. We thought given the City's economic situation that it would not be prudent to pay the public members, and so we are recommending maintaining the current \$150 a month that is paid to the public member and the civil service commissioners that serve on the boards. And that that could be considered for change in the future. We also thought it was important to spell out the details of in which order would the positions be replaced? So that next section summarizes that. One of the suggestions we got was that there should be a background check, and we agreed with that, that there should be a conflicts and background check and we recommend that the city attorney's office manage and coordinate that. And lastly, we recommend that there be a process by which board members can be removed by making a request to the city council. So another issue that came up is the issue of the direct appointment of employees and retirees. The administration would have been in agreement with the recommendation of Cortex to directly appoint but in learnings about the city charter requirement, that precluded that recommendation without having a change in the city charter. So our recommendation was that there be an ordinance that really clarifies that the council would give first consideration to the employee or retiree who received the most number of votes and historically in all but one situation the council has appointed the employee or the retiree that received the highest number of votes, and that we recommend that in the ordinance, if the city council were, for some reason, to select someone other than the one with the highest number of votes the council would articulate the reasons for that decision. However, lastly to be consistent with the city charter the council would retain the option to interview others and the discretion to appoint any. That would be pending a charter change to allow for the direct appointment. And in phase 2 our recommendations were to explore the charter change to allow for that direct appointment of employee and retiree board members and to continue to analyze the other Cortex recommendations and to return to

council with recommendations on each of the other recommendations. Terms of next step? Approval of the administration's recommendations would require revisions to the municipal code, and the City Attorney's Office would draft those ordinances. They would as soon as possible come back to council for approval. And then we would -- the next steps would also to be to continue with phase 2. So that concludes our presentation, and we're happy to answer any questions you may have.

>> Mayor Reed: Thank you. I'm sure there will be some questions. City Attorney has some comments before we get to the council.

>> City Attorney Doyle: Thank you mayor. I wanted to comment briefly on the memo from the mayor and the four councilmembers. Just because I want to clarify, I know the City Manager had identify one concern and that's set forth on page 3 of the memo subsection H. And the concern over the role of the council, here specifically the Rules Committee and having oversight versus the City Manager. And I -- the charter allows the council to establish any and all departments including the retirement department and set forth the duties of any departments. But once that's done the management, your chief operating officer is the City Manager and there's limitations on council interference. Council can work through the City Manager, ask questions, provide comments, do investigations, but cannot direct the manager and so I think what we want to make sure that if we come back, if this does go forward we would come back with an ordinance that tries to maintain that balance. It's really created in a way that the Rules Committee would have the ability to ask for inquiry, but the first step if the board has concern is really to go to the manager and ask the manager, you know, you're not getting us the right information or we have concerns and it's up to the City Manager to address the questions. If there continues to be an issue the Rules Committee can inquire and investigate and ask the City Manager to respond but that would be how we'd approach any proposed ordinance. Similarly, on subsection I, this is the one that I've had the most concern about, and it's just a clarifying item, and that is three quarters of the way down is appointment. The charter currently gives the council appointing authority and that is really a discretion that the council has. The concern is to the extent you try to tie that up, you're binding future city councils, either legislative acts -- you really can't commit city councils to something or limit their powers. So the idea of, you only could reject is with a finding of cause, I think as the administration was recommending, it would provide a reason. We would sort of take that as synonymous that you would come -- the council would have to give a reason, or would say a cause but not a -- not so that there has to be substantial evidence in the record to support a finding. Because we don't know what that cause may be. It's whatever the council wants to decide. And that's important to maintain that appointing authority. So we can craft something that that addresses this and comes back to council and then have council review it but we're really going to tackle it so anything that goes forward is consistent with the charter. And with that I'll answer any questions.

>> Mayor Reed: Thank you. I'd like to do some disclosures first. In preparation for this meeting my staff or I or both of us had a series of conversations and meetings with representatives of central labor council, including Bob Brownstein and Ben Field, representatives of the city labor alliance, including Yolanda Cruz, Nancy Ostrowsky, Bill Pope. The police officers association, Jeff Ricketts, the firefighters, Randy Sakani, the police and fire retirees, Tom Sagow and Dustin Derillo, from Sagow Derillo, Jay Wendling and Bruce DeMers representing the retirees. And I want to thank everybody that's been engaged in this for the last year for getting us here it's taken a lot of work on the staff and Cortex, and I think this is really important things that we need to do that's to the benefit of everybody. Because one of the things that I concluded after talking to a lot of people is, it is in everybody's interest to have a well performing plan that is well managed. I don't think there's any disagreement on that point. There's some disagreements as to how we do it but everybody wants to have a successful plan. When I first got elected to city council, I didn't pay much attention to retirement boards. I wasn't appointed to be a member of the boards and so I didn't get too much concern about what was going on. That changed a few years ago when San Diego pension plan exploded in a fire ball of criminal indictments, civil litigation, investigations and audits destroying the financial reputation of San Diego and eliminating the ability of San Diego to issue bonds. That was a wake-up call for me. And after studying what happened in San Diego, I started taking a lot more interest in our own plans. And I became concerned that there were weaknesses in our governance model, and some of those things that I thought were weaknesses, have been mentioned. But I just want to go through some of the examples. First, the taxpayers are essentially unrepresented on the boards, yet if the plans perform poorly, taxpayers are on the hook to make up the difference, while employees had no obligation to kick in any additional money towards the shortfall. And the billion dollars of losses in value that were discussed earlier and the checks we're going to have to write next fiscal year to begin to make

up those losses I think demonstrates the importance of that fact. There were also no minimum education experience requirement for board members and council put little emphasis on conversations much prospective board members. Councilmembers were the most difficult position of all because as a board member they have fiduciary obligations, as councilmembers they're susceptible to political influence and having to balance the city budget every year. And that is a very difficult spot. Candidates for employee and retiree seats for the boards routinely promise to use their positions to enhance benefits, which might be contrary to their fiduciary obligations. And in good times and in bad times, both plans underperformed other plans. And best practice seemed to be, to have some outside board members with additional expertise because over the years, they seemed to do better. Over the past three years, we've made some really important changes to remedy some of the problems that I saw. We did an audit of the travel and took corrective actions to ensure that travel expenses were necessary and appropriate. We instituted background questionnaires and had public interviews of candidates to get people with more experience and expertise as board members. And a very important fact, the four councilmembers who've served on the boards have been fully engaged and active participants in board meetings and all these issues. And I thank Councilmember Constant, Liccardo, Herrera and Kalra for taking on the difficult task of getting up to speed, understanding the issues, attending hours and hours and hours of board meetings to help work through the issues that we face, and ultimately signing onto the memo that we've authorized together. The memo which is dated February 4th is built around the staff's recommendations and policy alternative B. It proposes some modifications to those recommendations, incorporates some of the materials from the Cortex report, but we're trying to honor the nomination process of the employees and the retirees, encourage a collaborative approach to board governance, all consistent with whatever the obligations of the charter put on us, because we're doing this with an ordinance change not a charter amendment. Throughout this process I had three objectives. I wanted to do three things. I wanted to end up with boards that had a majority of members without conflicts of interest, that were independent and represented taxpayers. I wanted to have some outside board members with high levels of expertise and experience, and I wanted to get councilmembers out of the untenable position of having to serve two masters and make difficult choices when ultimately it's tough to decide are you a councilmember or board member on any given day. The memorandum that we've authorized accomplish all three objectives. Some people have criticized it for saying we didn't go far enough. I just ask you to consider how far we've come and let you know that we'll implement this, we'll evaluate it, and if we need to take some additional actions we can do that. The recommendations in the memo basically are built around policy alternative B with the 3-3-1 concept. 3 representatives of our employees and retirees, this is for federated, 3 public representatives, and a fourth public representative to be recommended by the other six members of the board, ultimately to be appointed by the council, because the council appoints everybody. For the police and fire board we propose the 4-4-1 board, with two employee representatives and retiree positions, one for police, one for fire, and four public representatives, again with the ninth member recommended by the police and fire retirement board after we've got everybody else seated. Each retirement board will have a city council liaison, and we'll have monthly reports to the retirement -- on the retirement boards to our public safety and finance and strategic support committee so that we keep the council engaged in the process without having to have councilmembers serve directly on the boards. The City Clerk will be responsible for managing the recruitment of public members, as she does now for many, many other boards and commissions. We've created an appeal process for board requests for information using Rules and Open Government Committee process that we already use for other public records act requests. And then a couple other things that maybe aren't clear. The remaining public board member would be board member number 7 for federated, board member number 9 for police and fire, gets selected from the original applicant pool, so we don't have to go back out with a whole new process just to select one member. Council would still appoint all the board members consistent with our charter limitations, and while we're directing the City Attorney to prepare an ordinance, all of the recommendations of course have to be consistent with the charter and whether that's section 411 dealing with the manager's authority or any other matters, that will be the city attorney's challenge to draft it in a way we've directed and still be consistent with the charter, we'll see that language when it comes back, and I think the City Attorney will figure out some way to do what we're trying to do here and still be consistent with the charter. So with that I'm urging everybody to support this memorandum that outlines the recommendations. It's an end of a very long process, and I thank everybody that's contributed to it, but especially the four councilmembers who have served on the retirement boards that have worked

so hard to understand it and to come up with these recommendations collectively for how to deal with the issue. So with that I will turn to Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First I'd like to make my disclosures. Over the period of a year, year and a half that we've been talking about these issues I've spoken to virtually everybody on your list but recently, specifically in preparation of the memo and for this vote, I met with the POA George Beatty and Jim Unland, and with the association of retired police officers and firefighters, Jay Wendling and Tom Sagaw. First I'd like to make a motion to move the memo forward and then I have comments. Thank you.

>> Mayor Reed: We have a motion on the floor. Councilmember Constant.

>> Councilmember Constant: I think the mayor did a good job of summarizing everything so I'm not going to go over all the different things. I just wanted to make sure the intent on item H was clear. And as being one of the people who really worked on this particular section, as a retirement board member, I can say that I've never had any difficulty getting any information from Russell or any of the retirement board staff. In fact any time I've asked for something I've gotten it very quickly. But I received several comments from people saying they couldn't get information they felt was necessary. And my response was quite simply, why should we treat this any different than any other request for information? And the goal was to mirror the public records request act where we, if someone's not getting the information they're requesting of the city administration, the Rules Committee has a discussion and with the City Manager there, and we talk about it and in the case of public records we've made decisions about their release. So my question to the City Attorney is why would this be any different if we're specifically talking about the ability to get information?

>> City Attorney Doyle: Well you're talking about the -- it's just clarity as to what's meant by the administration. If one could read that, that if you don't get the information from the retirement director or his staff, then you run right to the Rules Committee and what we're saying is that the protocol is to go to the City Manager first, before the rules committee is to consider it. But the difference is when you get public records act requests they're third party requests. Here you're dealing with an appointee who serves at the pleasure of the City Manager. The City Manager is the appointing authority so it's really within her domain so the proper protocol is to let the City Manager have the first appeal, which I think is maybe what's meant when you say the administration. I just want to make sure it's clear when you say the administration you're not talking about the retirement department you're talking about the City Manager ultimately because she's the one sort of the buck stops with her.

>> Councilmember Constant: Right.

>> City Attorney Doyle: And that's who the council should be dealing with.

>> Councilmember Constant: And that was exactly my intention there. My thought being that if the board takes action and asks for information, it's a pretty official act. I mean, it's part of the minutes. And they're requesting information. If that information doesn't come forward, which again I've never seen that happen, so I don't think it's an issue. But if it doesn't come forward I think it would be the responsibility of the City Manager and through the retirement services to provide the information, and then if not, the avenue would be to go to Rules just like a public records request. And then the second part of that is if it's a serious problem and there's multiple times where in a year we get multiple requests for this same problem, then I think we need to look at the phase 2 recommendations as they were called, the independence of the board. And I think what's important to remember here is that the board is, while not completely autonomous, pretty autonomous in their plenary authority to administer the fund and request information for the purpose of administering that fund.

>> City Attorney Doyle: That's correct. And I think, you know, you have, the council has the power to create the departments, clarify their roles and responsibilities, the same with respect to the boards. The only caveats to the boards is you have a constitutional protection and requirement that they administer the funds. So we're just trying to reconcile charter constitution to make sure everybody -- it's all appropriate.

>> Councilmember Constant: Okay, I just wanted to make sure you understood the intent of kind of what we were talking about but again I don't think it's a problem so I don't think it's hopefully ever going to come up. Other than that just as a councilmember who's been on the retirement board for now a little over three years and taking the opportunity to go to all the training and learn as much about it as I can, serving on the board is an interesting exercise in finding out what you don't know because there's so much specialized training information and expertise needed to do that job. And I think this is a very good job. It's the thing that's in not only in the best interest of the city but I truly feel it's in the best interest of all of our

employees and retirees. So I do urge all my colleagues to support this, and then I have one question just for my own clarification, maybe this is something we need to look at at another time. With these -- this memo and that builds on the City Manager's recommendations, is there an opportunity for the unions and/or the retirees if they so wanted to appoint a surrogate in their stead or would that take another action at a future time?

>> City Attorney Doyle: You're talking about a surrogate being --

>> Councilmember Constant: So, say, for example, in a year the unions or the retirees come to us and say, you know what? What you're doing is working so well, we want to select an expert to represent us, as well.

>> Alex Gurza: I could comment on that. I think Councilmember Constant you're referring to one of the recommendations that Cortex made is that employees and retirees have the option not to necessarily appoint an employee or retiree. So they could choose to select someone else, someone with experience that they companies choose to put on it. That is an issue we could look at, at phase 2 and whether or not that is even possible or desirable for the employees and the retirees. We heard a little bit of mixed thought on that. There were some internal stakeholders that wanted that option and some who did not, who wanted it to be a retiree but we definitely can put that in phase 2 to further explore that possibility.

>> Councilmember Constant: I don't think it should ever be an issue where we demand they do that. But I think if the desire is there, it should be something that we are willing to entertain at a future time. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Alex why don't we give them the option now, they can do so, if they wouldn't like to, they won't?

>> Alex Gurza: I think we could do that. One of the things we were first trying to determine is whether or not we were going to move forward to a potential charter change for a direct appointment. I think one of the issues that we need to sit down and talk to them about is about whether they want that option, and then how is that option selected, because currently right now, the City Clerk conducts an election among all members of the plan. So for example, in the federated system and even in police and fire to a small extent includes management employees and all members, so all members vote as well as retirees. So we would have to sit down and talk about the detail of how that would function in terms of how to select that person. And so we can start in that process. But I think we need to work out those details before that option is given.

>> Councilmember Liccardo: Okay, thanks Alex. I've heard that in L.A. and several other public funds that in fact they have decided to choose outside experts and if that works well for them I think that's something they should be able to do. I just wanted to say I'm thrilled to be able to vote myself off the board, as much as I've enjoyed serving and enjoyed serving certainly with wonderful board members Russell and his team certainly great people, I've learned a lot. Haven't learned nearly enough because it is very complex as Pete mentioned. But at the same time, as I've said before to paraphrase Groucho Marx I wouldn't want to join any board that would have me as a member. When we look at how much money is involved here the billions and billions of dollars I think we really have to look at it with that kind of care. And knowing this is not something we just do for a few hours out of our council week. The question I had about some of the unfunded liability that you referred to, Russell, I know on the retiree health care side I know we've seen estimates somewhere between 1.4 and \$1.6 billion unfunded liability and I'm sure those numbers change by the month. On the pension side, the two numbers you gave me led me to a number of about \$1.5 billion of a hole that we've got to make up to get back to our actuarial targets. I know on the retiree health care side that obligation is split 50-50. With regard to the 1.5 billion on the pension side how is that obligation divided between taxpayers and the employees and retirees?

>> Taxpayer -- excuse me the full obligation is to the taxpayers.

>> Councilmember Liccardo: Right. And so in terms of understanding what the burden is within the city budget, I know that this fiscal year we're spending about \$138 million on retiree benefits. As I recall we estimate that next year just to make up the pension shortfall we're going to be spending between 38 and 40 million, is that fair?

>> Yes.

>> Councilmember Liccardo: Okay. And to understand that, that graph that you had where the line goes up from 22% to 33%, the percentage of --

>> Sorry.

>> Councilmember Liccardo: Of payroll cost I believe, trying to have a clear sense, yeah, that was it, trying to have a clear sense in my head about where we're going in terms of city responsibility, that 38 to 40 million reflects the 33% or 33.7% number we see there, is that right?

>> It's actually somewhat less than that. Because what you're looking at there includes the full corridor and the board decided to widen the corridor.

>> Councilmember Liccardo: Correct.

>> So that you're not going to pick up the full 33.7.

>> Councilmember Liccardo: Right, we're going to get there in smaller increments.

>> Yes but you do very quickly get to the 34.9, 38 and then the 46.

>> Councilmember Liccardo: Right, I guess that's where I was going which was by fiscal year 2013 how much that additional burden going to be on the budget and I'm guessing the number's got to be north of 80 million.

>> Alex Gurza: We can do the math on that but I think your estimate is a pretty good one.

>> Councilmember Liccardo: Okay so in today's dollars somewhere between 80, 90 million or so. That's really significant, obviously it's an enormous impact in cutting city services to our residents, and so we need to be very, very vigilant about the fund and its impacts both on the retirees as well as on the taxpayers because that is a taxpayer burden. I wanted to thank certainly all the leaders of the bargaining units who came forward to work with the mayor's team in fashioning this compromise. I think it's clear it is a compromise. But I think it's an important step forward and I think politics is about the art of the possible and I think this is a good step forward and I wanted to thank them, I wanted to thank Armando Gomez and your team for getting everybody around the table and everybody on the mayor's team to make this happen, so with that, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just wanted to disclose I met with Dustin Derollo and the retired police and firefighters and spoke with Ben Fields, Central Labor Council, in preparation for this meeting and this portion. And as trustee for police and fire retirement board, at this moment but not for long, I think, my top priority is protecting the investments of the hardworking men and women of the police and fire department while protecting the General Fund, so and that is the mission of the board, always the protection of the General Fund was part of our mission. I've been really proud to serve on this board. As many of us know first I was not too happy about it. I thought I pulled the short straw but it's been an incredible learning process. And -- [Laughter]

>> Councilmember Herrera: And after a year of working hard to make the right decisions in the interest of taxpayers and members of the retirement system I am going to tell you I will miss the work of the board and working with those board members that I've come to know and also the staff of the retirement board, Russell Crosby and the staff are incredible. I also want to say in spite of how bleak things look here in looking at the kind of shortfalls that we are going to have to pay back and work through some these tough times I've seen progress from working on this board. We've seen new appointments with board members with more financial background, we haven't seen abuses of travel, we've seen people very cautious about that and we've seen board members work really hard. The members of this board. So I just-I think that needs to be said. When Cortex report came out I attended the public meetings. At least one of them. And listened to the feedback from the community that attended, the retirees, members of the public and I think it was very important that we listen to that feedback. I want to acknowledge the work of all the parties involved in this negotiation, in this compromise including the POA, the firefighters, the retirees, the community. Your voices were heard and I especially want to thank the mayor for bringing this together for his leadership in bringing all the stakeholders together and creating this compromise. That builds I think on good board practices and make it work for San José. And also, the fact that we've avoided the necessity of a expensive charter change process right now, although I'm not sure that's ultimately going to be the case, I know the process hasn't been easy for the stakeholders, but I think we've really moved forward, and I want to thank you and your members for sticking to your priorities, making the compromises, and ultimately a solution that works for San José, and I'll be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor the graph that's currently up is that what that looks like on the bottom just reflection the police and fire plan is that correct?

>> Alex Gurza: That's correct, this is only police and fire.

>> Councilmember Kalra: Okay. And so the federated is at a similar percentage or is it something different?

>> Different, smaller percentage but essentially the same kind of picture.

>> Councilmember Kalra: The same track and of course the federated would be to reduce the assumed rate very recently and we're in the process of formalizing that which I think was a great step that was taken. I know Councilmember Constant and I and the others were fully supportive of that. So I certainly want to thank all the work that's been done. I know Aricelli, Alex and Russell are here and a number of people that aren't here that played a role and I want to thank the City Manager for her leadership as well and I certainly want to thank the mayor and his team in working with the community, working with the bargaining units, working with the retirees to come to what I think is a very good resolution. And I think compromises in repeating the word compromise really undervalues what we're doing here and undervalues the steps we've made, and it's certainly a compromise compared to what Cortex would have liked to us do. But I think that what we're doing here is absolutely valuable, and of the three goals that the mayor indicated in his opening remarks, I somewhat agree with those three goals except of the three, having a majority independent, I think, is certainly valuable but not so much because the worry of conflict of interest. I think that getting the councilmembers out there probably resolved more of a conflict, because we do have to worry more about the General Fund, we have to worry about the backfilling of the fund and so on. But in the year that I served on the federated board I think the other board members I served with, including Councilmember Constant, always acted in the best interest of the fund and there was no indication to me that any of them did anything but analyze the problems and issues before them in the best interest of the fund. And so conflict of interest really wasn't a primary concern as far as I was concerned. And although all of us have been concerned about the money we have to put into the fund, impact on the General Fund, impact on taxpayer, once appointed the trustees have a fiduciary duty to the fund. However adding the expertise I think will certainly benefit the fund. And whatever we can do to benefit the fund to make sure that it's being managed in the most reasonable and efficient way possible, is a benefit to taxpayer and has a benefit to all of us because it reduces the likelihood that we're going to have to be in a position to take money out of the General Fund. And I think that the expertise is certainly valuable, and, you know, as the mayor stated, the final person that will be selected to these boards is going to be from a pool of expertise, and of experts. And so we can be certain that the majority of the board will have expertise, I'm glad academe ya and there's a broad spectrum of folks that can be included as experts, additionally, the other members that will be representative of employees and retirees will have much more of an interest and much more of a likelihood to ensure that they're up to speed, and the retirees and employees themselves are going to want to select folks amongst them that have the expertise or show the willingness to gain that expertise. I know that can be done, and I think that it will overall benefit the quality of the board membership and was discussed a little bit earlier, the opportunity to allow for greater flexibility in the employees or retirees to choose some -- choose an expert, maybe something we can explore. But all in all, I think that this is -- I think this is more than a compromise. I think it really offers something that's going to benefit these boards and the fund. We certainly didn't abide by all of Cortex recommendations, for example getting the \$150 a month. I think they were very clear that in order to obtain expertise you need to give in the order of thousands per meeting to do that. We can't do that, we know we can't do that but we're going to once again go out to the community and hope there are people that are willing to serve as has happened time and time again in the community and we'll ask folks in the financial community to do the same and I'm hopeful that we can find folks that are willing to serve in that capacity. But again, I'm thankful to the folks including the bargaining units and the retirees that came forward to work with the mayor, work with the administration to work for a solution that I think is going to ensure that we have those that are putting money into the fund feel secure in their representation, where we also know that there is a level of expertise that we can all feel comfortable with as well. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. I'm going to keep my comments short, since my colleagues did a pretty good job articulating everything that I wanted to share. But I just wanted to thank Mayor Reed for his leadership on this matter. I think it's really crucial for us to realize that at a time like this, that we have a mayor that understands what we need to put at the forefront and having the willingness to work with the unions to come up with reasonable solutions and at the end of the day, when we're able to work together with everyone, including our bargaining units and our unions, we've come to have a deliverable product which is this memo that we have in front of us today. So I just want to thank the mayor and the leadership of all the unions for really putting, you know, all the politics aside and coming together to do what's right for everyone, especially for our residents. I just have a quick question. On G in the memo, it says on here that we should report, we should have a monthly report to

the Public Safety finance and strategic support committee. I chair that committee at the moment, and it seems like every month we're getting items pushed back to the following months, I'm not sure -- I know Deanna Santana is not here and she represents the City Manager's office but I'm not sure if this is realistic. I'm not sure if we should have a quarterly report just like we do with other investment reports that we hear on a quarterly basis rather than a monthly report. Because I just hate to see things being pushed back over and over again.

>> City Manager Figone: We -- I think that would be fine with us. I just wanted to ensure that whatever it is that the mayor and councilmembers who signed on, their intent was. I think I would assume one intent is let's keep these issues out in front of the committee so the council doesn't lose connection with what's going on in the plans. And so if we can do that with bimonthly, to the council satisfaction, I think that would be fine.

>> Councilmember Nguyen: I think it's a great idea to keep the councilmember at least four of us engaged, but I would ask for a friendly amendment that we -- that staff come back on a quarterly basis rather than a monthly basis for the report.

>> Second that.

>> Councilmember Constant: I don't have a problem with that. As long as it's regular and maybe Russell, how do you feel it would fit in with your reporting?

>> Sorry. Normally, for example, we would really get the December 31st quarter wrapped up and completed about March 1st. So it's lagged because of the custodians reporting and the manager reporting by about a quarter anyway. So if you did it on a quarterly basis it would make more sense because most of our reporting is geared to quarterly reporting anyway.

>> Councilmember Constant: I'm fine with that as long as it's coming on a regular basis to the finance committee.

>> Mayor Reed: I'm not sure who had the second on that. Councilmember Herrera. What does the clerk say? Clerk says Councilmember Kalra has it. Clerk gets the call. Is it okay with the seconder as well, the quarterly report?

>> Councilmember Kalra: For confirming I seconded a motion from Councilmember Constant?

>> Mayor Reed: Yes, circle that day.

>> Councilmember Kalra: Bound to happen.

>> Mayor Reed: Motion is amended by friendly amendment.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I don't have much to add. That's what I was going to bring up too. Thank you for getting that handled. I wanted to report I did meet with Tom Sagal and with Bruce Demers.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: Yes, I just wanted to disclose that I met with Ben field bob Brownstein and the president and vice president of the PAO.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: My office met with Tom Sagal and I just wanted to make a few comments and I'll keep them short since Councilmember Constant said time to vote. So one thing I wanted to say, I think it was really wise of you mayor to actually go to some of the simple techniques, of sitting down and with the stakeholders, finding a simple resolution to a complicated issue. And I think that the memo that you and my colleagues have put forward is a great compromise to an issue that has been very daunting to us as a city for a long time. I'm looking forward to being able to vote on this, so that we can actually have some structure to the new makeup of these two boards.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to disclose that I have met with Dustin Derollo and Bruce Demers, I believe Jay was there, too, and also my staff has talked with Ben on the phone, Ben Field on the phone. Thanks.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I think I've met with several of the employee union leaders and I can't remember them all but I'm pretty sure they've all been named so far and I just wanted to again thank the mayor's team. I remember as Councilmember Campos said this was a simple resolution but it was far from easy I know that.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: My disclosure's on my calendar but I did meet twice with retired police and fire also attended both the Cortex outreach meetings with all the retirees and employees and heard a lot of the feedback. I'll be supporting the mayor today and I thank him for his work. At the same time for -- how many retirees are in the audience? Okay. Your benefits, your retirement, is going to be safe. Okay? But what I got to tell you is for any of the new employees, they're not going to have what you have. It's 100% unsustainable. We have to switch it, but you're okay. You're grandfathered in so whatever rumor you hear, public myth, whatever, you're good. But in the end to keep this city running to provide services for a million people I have to provide new benefits for new employees. Even if I switch to a 401K and matched dollar for dollar it would still be cheaper than the system I have today. And if you look at my budget you know \$180 million approximately this year is going to go to pension matches. That's the equivalent of approximately of our entire citywide fire department, that's a lot so you're safe but everyone that comes after we have to have that change. Just want to you hear that from me. Thank you.

>> Mayor Reed: Sometimes it's good to be a grandfather. [Laughter]

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: I just wanted to disclose that I met with Durnity Derolo and retired police and firefighters.

>> Mayor Reed: Thank you I'm going to take some public testimony now. Please come on down when I call your name so you're close to the microphone cut down on the commuting time. George Beatty, George Wendling, Linda Didis, Gay Gayle.

>> Good afternoon Mayor Reed, members of the council. I want to stand here and say, I want to give credit where credit's due. I certainly want to thank the mayor for taking a leadership position on this issue and the councilmembers that have supported him and I certainly would hope by the end of the meeting we have everybody's support. We certainly know this was a contentious issue. Both sides felt very passionate about it and I think the council, you deserve credit for listening to all of the bargaining groups, keeping the taxpayers' concerns in mind and we came to a successful resolution. So that's it. I'd like to thank you, all of you for your hard work and efforts. Thank you.

>> Mayor Reed: Jay Wendling, Linda Didis, Gay Gayle.

>> Good afternoon, honorable mayor Reed and councilmembers. My name is Jay Wendling, I'm the incoming president of the association of retired San José police and fire. We're here to express our support for the mayor's memo. We believe the solution being proposed today will strengthen the retirement funds while at the same time, honoring the choices of employees and retirees. We want to thank the mayor and his staff for engaging retirees and employees in this process, just like we were real stakeholders. We thank you for that. We think we're getting a stronger product with more buy when it's handled this way. We hope that the message that the city administration gets is that when we're engaged, as collaborators instead of confrontational people, we can achieve greater solutions. We also want to thank the current and former members who have served on retirement boards. We know that the councilpeople found that to be a hard and time consuming job with your input and guidance, and instrumental in building two nationally respected funds are greatly appreciated. We appreciate your support and encourage you to support the mayor's recommendations. Thank you.

>> Mayor Reed: Linda Didis, Gay Gayle Ken Heridia.

>> Hi, I'm Linda Didis, I'm a business agent for AFSCME. We represent the bargaining units MEF and CEO. I would like to reiterate what the past speakers have spoken to. You know, when we started out, I think that we were not anywhere on the same page. I don't think that we got everything that we wanted. I'm not sure that the city got everything that they wanted but meeting us halfway was really important and I'd like to also thank the mayor and councilmembers who support the second -- the second choice on the memo. And I'd also like to thank the councilmembers that served on boards. I think that, you know, I, too, in the last few years or at least in the last two years along with our leadership have tackled a lot of subject matter on these boards that is very, very difficult for us to understand. And the retirement staff has been awesome in trying to take time to explain it to us, also. But you never really grasp all of it. And I think that it's -- it's a lot of extra work and a lot of information that is done on a lot of your own time trying to understand it. So I'd like to thank you also.

>> Mayor Reed: Gay Gayle, Ken Heridia, Ben Field.

>> Good afternoon, mayor and council, Gay Gayle, president of camp, IFPTE 21, representing 400 managers in the city. I would like to thank you very much mayor but I'd also like to thank Vice Mayor Chirco, because two weeks ago this solution wasn't on the horizon. We believe that you and your colleagues on the council, councilmembers Herrera, Liccardo, Constant, and Kalra have crafted a memo

that will take us clearly and cleanly and neatly into the future. But we wouldn't have happened without your leadership, without your staff, Armando especially, bringing the groups with far disparate ideas together, and we thank you and encourage everyone to support the memo.

>> Mayor Reed: Ken heridia, been field, Bob Leninger.

>> Good afternoon mayor city council my name is Ken heridia, I'm a retired firefighter. Hi the privilege of working for the San José fire department for over 30 years. We support the mayor's proposal and feel it's important to give credit where credit is due and to keep the debates focused on the appropriate context. There has been no secret that some in our community have chosen to declare war on public employees and retirees. However in the course of this pension debate in addition to attacking us the paper and some of the committee have attacked the council. I think we should be clear the funds have done an outstanding job for the city and our taxpayers prospect we're proud of the performance and we believe that the city council members who have served on the boards have done so honorably, faithfully and with a degree of integrity that shows their commitment to the citizens of San José, the employees, the retirees and survivors. Thank you very much.

>> Mayor Reed: Ben Field, Bob Leninger, Shane Patrick Connolly.

>> Mr. Mayor, members of the city council, my name is Ben Field. I work for the South Bay Labor Council. I want to commend the mayor and his staff, particularly Armando Gomez, and also city councilmembers Herrera, Liccardo, Constant and Kalra for their good work. I also want to thank Vice Mayor Chirco for asking for the brief delay that allowed this compromise to take place. The mayor's memo sets forth an argument that -- excuse me an agreement that protects the interest of the city's taxpayers and the interest of the City's workers, both of whom would be at great risk if our pension boards were not well run. It also demonstrates that when the city negotiates collaboratively with its retirees and its unions the result is better public policy. As the city considers how to resolve its current budgetary problems the city unions should continue to be treated as partners in make public policy that serves the public's best interest. Thank you.

>> Mayor Reed: Bob Leninger, Shane Patrick Connolly, Pat Saucedo.

>> Thank you, Bob Leninger, president of the federated retirees association, wanted to -- there we go, it still works, it's not the only thing that needs fixing. We also have been invited in over the last year in all the intense number of meetings and the input that's there and I want to thank the City Manager and her staff for doing that. Everybody is not in agreement on everything here but we support the motion that's on the floor here and appreciate the mayor's leadership and Judy Chirco and the rest of the councilpeople that have stepped forward to do this. It is a good model, it's an improvement it will take a good system and make it better and do what the taxpayers need us to do and we support that and thank you for your leadership. Thank you.

>> Mayor Reed: Shane Patrick Connolly, Pat Saucedo.

>> Honorable Mayor Reed, members of city council City Manager good afternoon. First I'd like to say that I do join the chorus in applauding your efforts to address the concern of the public employee unions in the matter of how the pension board is constituted and I support as much proposals, of expanding the police and fire board so that active and retired members of both police and fire are equally represented. And you worked very hard to balance these interests. However, as the councilman Liccardo established, this wasn't the losses on the pension fund are 100% borne by the General Fund. And thereby, 100% borne by the taxpayers. So in that situation, a 50-50 compromise falls short of being adequate. Any reform that does not give a clear majority of control on the pension board to independent experts who represent the taxpayers through the city council does a disservice to the people who are paying the bills and to whose jobs will be eliminated and to those of whom rely on the city services that are being cut. In order to provide the over a billion dollars that eventually will be needed to make up for the pension shortfall. And that's despite the mythology presented in previous hearings about loss of benefits and whatnot because their benefits are guaranteed, as Councilman Oliverio so keenly pointed out. While the reforms proposed represent an important improvement on the present board makeup that has the proverbial foxes in charge of the hen house, having each board appoint their final member dilutes the more robust taxpayer protections in the City Manager's recommendations and in the reconstituted board in San Diego after their debacle, creating a board member from within the board creates the member who is beholden to his or her fellow board members and not directly to city council. And --

>> Mayor Reed: Sorry your time is up.

>> And that concludes my remarks, thank you.

>> Mayor Reed: Pat Saucedo.

>> Mayor and council, Pat Saucedo of the San José Silicon Valley chamber of commerce representing 2,000 of businesses the majority of which reside in the City of San José. The San José Silicon Valley chamber of commerce wants to commend the mayor council federated and public safety representatives for their efforts to find a compromise that begins to address the changes that are needed in federated and public safety pension board makeup. While the chamber applauds the efforts to date, we continue to have a concern that the taxpayers, who are also stakeholders and bear 100% of the risk of pension shortfalls, should have a majority position on the pension boards. The chamber strongly recommends that the compromise before you this afternoon be amended to require that the additional appointee to the pension boards be selected directly by the city council, in public session, upon submittal of each candidate's resume outlining their individual experience, education and credentials in portfolio and investment management. And I think I would like to add, and I think it was resolved under Councilmember Constant's questioning, but the City Manager in the beginning raised a concern in regards to if there are concerns or disputes, that they go first to the City Manager for response before going to the Rules Committee. And I would say that the chamber also endorses that since the City Manager is the COO by the city but I think that was resolved during discussion by the council. Thank you.

>> Mayor Reed: That concludes the public testimony on this matter. Bring this back for additional council discussion. If there are any additional comments or questions now is the time. We have a motion on the floor made by Councilmember Constant with a friendly amendment. On the motion itself then all in favor? Opposed, none opposed, that's approved. Thank you very much, we appreciate everybody's participation. We still have some work to do this afternoon. Our next item is 5.1, Parks, Recreation and Neighborhood Services capital projects schedules.

>> Albert Balagso: Good afternoon, Mayor Reed and members of the council, Albert Balagso, director of parks, Recreation, and Neighborhood Services and I'm here with Matt Cano, the division manager for our capital program. On Item 5.1, we are proposing to place a hold on 12 new park projects but I would like to lay a foundation for why we're moving forward with this recommendation. Since 2000, the department has completed about 400 parks and recreation projects and this includes the addition of 80 new park acres and nearly doubling community center square footage. At the same time we've been experiencing a reduction in our ability to maintain these facilities as a result of the economy and the cuts that we've had to absorb. We're now in our ninth year and this year that we -- the City Manager has asked us to look at a 35% scenario for reductions within our departments, for those of us who are nonpublic safety. That amounts to approximately \$17 million for PRNS. To give you a sense of scale, or what that means, \$17 million is elimination of all community centers. Or it would be nearly a complete elimination of all park maintenance. The other third of the department is our gang intervention program, such as San José B.E.S.T, antigraffiti, aquatics, Christmas in the park and so that's the other realm that I have to look at. So we're trying to work on how to we balance the resources that we have that we can maintain a sound parks and recreation system to our residents. I'd also like to point out that we haven't just dealt with the reductions, we've tried to be innovative and work out of the box and find some creative ways that we can sustain the services that we do have. So we have with council's approval moved forward with reigniting our volunteerism program. We've utilized community center reuse as a method to try to keep our facilities open. We've initiated partnerships both in the public and private sector so that we can sustain some of our parks and keep our facilities open. And actually build facilities in some of these partnerships. We've instituted tiered maintenance systems to more better mobilize our resources to do better and last year, we brought forward for council's approval pricing and revenue policy that enables us to set fees. We did increase the target for fees and we're actually tracking in this economy 8% of what we anticipated that we would track. So we're able to try again to make ourselves more sustainable. But with all this we're still losing ground and adding new facilities, at this point in time is going to make it more difficult for us to even keep up what we have let alone deal with the cuts that we have ahead of us. So just one other thing in December, the council approved the greenprint and in there they identified what order of the priorities we ought to move forward with. And in there we identified the hundred miles of trails as a priority, we're looking at infrastructure backlog and sustaining and maintaining what we have as a method of moving forward. Land banking for the future and the conversion of sports fields from natural to synthetic turf to save money and create greater play for our community and that's the focus that we wanted to emphasize is in the near term so that we can have a better sustainable future. So that is in a nutshell the proposal regarding the 12 projects, and continue to come back each year in the annual budget process to determine how we might move the projects forward, and to direct staff to go back and have some stakeholder conversations of how we might take some of the innovation that we have done around

volunteerism, sponsorships, partnerships and perhaps utilizing other mechanisms such as HOAs or community facilities districts to look at ways that we might be able to sustain these new amenities and then propose moving forward in that format. That concludes my presentation and we're available for any questions that you may have.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor, Albert and Matt, thank you for all your hard work. I know that this is not easy news to deliver, but I know you've been delivering it for several months, it's been pretty consistent. I appreciate some of the time that Matt has taken with several of our community members to work on some of these alternatives like the one that's actually referenced exclusively in the report about Newhall and what we're doing around community facilities districts out there, and I know we're looking perhaps at other concepts around Pelier, perhaps expanding the Pbid. I had a couple of questions. One is we're about to vote next on prop 84 grants applications, and I know one of the criteria in the prop 84 grant applications is whether or not the city has the ability to pay for O&M costs, operations and maintenance cost going forward. What I'm concerned is does a vote on this item somehow color how the state is going to view our applications under prop 84?

>> Thank you, Matt cano division manager Parks, Recreation, and Neighborhood Services. No, we don't feel it will. The state is very clear they're going to be very criteria based on their evaluation as far as projection on prop 84 as far as this income level and other criteria so that we don't think they'll be using subjectivity such as this type of vote.

>> Councilmember Liccardo: Okay, so I'm worried, I agree with what you're saying about getting criteria based but it appears one of the criteria is, there is some fiscal component here and I could be mistaken here, I'm looking obviously at the next item but the commitment we have to make is the city shall have sufficient funds to maintain the project. I'm not sure if that's an explicit criteria or if that's a commitment we have to make after award of the grant.

>> That would be a commitment once we receive notification we're awarded the grant, once we have the grant we'd have to make that commitment that is a future discussion we'll have to have.

>> Councilmember Liccardo: Understood, okay. Then what was very level was this one page memo dated February 2nd describing the annual impact to the General Fund for each of these parks. And as I look at this I see three of the parks listed in district 3. Can we safely assume that those numbers can be used as targets for whatever community we're speaking with if we are to find some creative alternative about how to create enough revenue to pay for the maintenance that's the number we need to hit?

>> Albert Balagso: Yes, that's correct.

>> Councilmember Liccardo: Great, thank you very much.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I have a couple of questions too. So I'm assuming that for a lot of these parks especially the parks in my council district that they're ready to go and what we have issues with in terms of funding is just for the operations and maintenance costs; is that correct?

>> I would like to say for Antonio Bellarmino/Almaden Apartments the majority of the funding to construct that park is in the redevelopment agency budget, and that has been pushed to an out-year. Montecito Vista park is a turnkey park through the developer, and they would like to delay the construction of that park, and as we've discussed with your office for West Evergreen park a big portion of the funding that the redevelopment agency had funded has been pushed to an out year as well. So there are with those three projects in your district there are issues with the construction funding as well as operations and maintenance.

>> Councilmember Nguyen: Thank you. And then the other questions I had was, considering that parks are important in keeping neighborhoods safe, I'm looking at the potential sort of negative externalities like blight, you know, weeds grow inside of this dirt land, would some of these externalities offset the fact that we are not building these parks, when we have these blight situations and we have kids coming over and messing up the land that we have, how do we factor in those costs in regards to not developing these parks?

>> Albert Balagso: The properties that where we do have the land we still have a responsibility for providing maintenance on those. So weed abatement and cleaning up trash and if it comes to the point where we'd have to fence that off to protect that is one thing we'd have to visit down the road.

>> Councilmember Nguyen: Great, you know I'm very reluctant to vote on this but I understand you know the current budget situations that our city's undertaking. And we have had numerous conversations with our neighbors around surrounding these parks. And at the end of the day they understand that this is

what we have to do given the current budget constraints that we have. So although I'm reluctant to support it I will support it and I wanted to thank staff for bringing this comprehensive report forward to us. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I have a -- talking about a specific, the Commodore park. We probably have the similar conversation before, so help me with the -- refresh my memory. The money is still there for the construction, is that true?

>> Yes, it is.

>> Councilmember Chu: Do you have sufficient to really start the construction of the park?

>> Yes, the project is fully funded in the park's trust fund.

>> Councilmember Chu: Is there any additional study that needs to be done?

>> No, there isn't, it's fully funded for construction and design.

>> Councilmember Chu: So by approving this item here we're not saying that you may -- will allow you to borrow the money from the park fund?

>> Albert Balagso: Councilmember Chu in ten years I've never been able to borrow from a park trust fund.

>> Councilmember Chu: Well, the question is is it possible to go through the community stakeholders meeting before we take a vote on this issue? Why do we kind of take a vote and then go to the community stakeholders meeting?

>> Albert Balagso: What we're recommending is that we not move forward with the project because we just don't have the resources to maintain new infrastructure. And in following with a stakeholder meeting if we can find a mechanism through the community to whether it's a grant, a corporate sponsorship, community facilities district, homeowners association that we can bring the critical mass together to find the way to support the maintenance on the site then that's what we would bring back to council for a mechanism for moving forward.

>> Councilmember Chu: Okay, great, thank you.

>> Albert Balagso: You're welcome.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank Albert Balagso and Matt cano for putting this together. I know these are -- it's tough decisions but I think you're putting together a responsible proposal. As much as I feel like Councilmember Nguyen, I have to reluctantly support it. I'm particularly concerned for the West Evergreen park which is of special concern to NAC leaders in that area so I would be looking for alternatives because obviously we can't -- we have to have a way to operate, to pay for operations if we put a facility there and we can't open it that's not responsible, either. So I think that I'd be very interested in moving as we move forward finding, looking at any way to alternatively.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Just a question for you Albert. Can you use C&C money for operations if a particular council district has a park and in order move it forward it sounds like it's operational or maintaining it that is holding it up, the funding, can you use it or can that be something you bring back to let us know if that's feasible?

>> Albert Balagso: The ordinance allows us to use 15% towards maintenance, and that is more specific, capital maintenance. It does not fund day-to-day routine.

>> Councilmember Campos: Okay, thank you.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I don't believe there's a motion yet, mayor.

>> Mayor Reed: That's correct, no motion yet.

>> Councilmember Chirco: What would I do is move approval and, as challenge as this is, I know it's the first of many challenging decisions, so I would move approval of the memo.

>> Second.

>> Mayor Reed: We do have a motion on the floor to approve the recommendations. I'll take some public testimony at this time. Michael Van Avery, Richard Zepelli, Steward Gilbert and Ian McCullough.

>> I'm so upset about this, I'm going to testify as a resident first, Michael Van Avery, 3583 Corsica Court, Evergreen, California. It's almost out of a play book from some type of head coach here I'm so upset. As a developer now, we're still collecting these fees to maintain these parks you have to have new development, for these fees through construction and the conveyance tax, through sales tax, going into your General Fund to fund these parks. However you continue to collect our developer fees. He told you,

you have construction costs. That means the development community has lived up to its part of the bargain here ladies and gentlemen. I provided you here a memo, 40% if not more of your impact fees go towards the construction of these parks. Who is it, Herman Edwards, we play to win the game. We pay you the fees to build the parks. We build the parks. We're not building parks because we can't maintain them. I'm not a lawyer but somewhere down the road, I know we talked with this with the HVA years ago on when these park fees can be expended. I think we need to look at that again because there is a statute of limitations how you can collect these fees and when you can expend them. Councilmember Pyle you chair the economic development committee along with Councilmembers Liccardo, Herrera and Kalra. I'd like to see this issue with impact fees brought forward. We have to get new development moving forward to create construction and conveyance tax that would allow these parks to be maintained. We need some help in the development community, guys, we really do. There will be a lot of people here who will be equally upset because they're not going to have parks. Councilmember Pyle please let's take this part of your economic development committee. Thank you.

>> Mayor Reed: Richard Zepelli, Steward Gilbert, Ian McCullom.

>> First of all, Richard Zepelli, I'm representing the stakeholders for a safe green village which is basically a stakeholders group involved all along Lincoln Avenue and along both sides of it, as well, so it's Willow Glen business association, Burbank Del Monte NAC and Willow Glen neighborhood association. Presently we have one park that's being shared by three council districts, pretty much. We just had Movie in the park that Councilmember Oliverio sponsored, paid for, and that park was full of residents for movies. They came mainly one-third from district 6, district 6 paid for it. Most of them came from district 3 and district 7. Adjoining it. This new park Del Monte park is going to have the same situation, it's right on the edge of district 3. KB homes -- Sobrato and with the elements project, KB homes, with the Mountain View and Monte Vista project and the Ohlone project, we are going to add another 3,000 units or 6,000 people to that area. We are in bad need of these parks here. Willow Glen, the last eight years according to the Greenprint only received 4/10 of an acre of new park lands in our area so we desperately need this new park. It also borders the Los Gatos creek trail as well. We really want to ask for your support in finding a way and the stakeholders will be willing to join in with the city to help find a way to maintain the parks. They're desperately needed. Please help us, thank you.

>> Mayor Reed: Stewart Gilbert, and Ian McCullough or McCullam. You'll have to tell me which.

>> Good afternoon, Mayor Reed, and councilmembers as well as citizens. My name is Stewart Gilbert, I reside at 809 Auzerais avenue. Which is a new development at the formerly cannery of Del Monte, cannery number 3. We have been promised a park across the street from our community. We do not have a park at this point. I was prepared to ask for first priority, once our financial crisis is over, but hearing what other people have had to say, apparently the funds are available now. I would wonder if it's a question of maintenance, I think we could possibly count on citizens to help to maintain the park. I mean we have this available at the rose garden and looks like it's excellently maintained by the public. So thank you very much for your consideration.

>> Mayor Reed: Ian McCullough or McCullum. Handwriting thing, lost in translation.

>> Mr. Mayor, councilmembers, I recently moved into the Monte Vista development built by KB Homes, each homeowner paying between 10 and \$15,000 each for a 1.7 acre park just that you now are saying is not going to be built. It is disingenuous for the city to adopt a policy that ensures adequate park land and then does not deliver. Do you support parks or not? The idea that you won't develop these parks because you cannot afford maintenance is ludicrous. That cities maintenance standards are so low it shows where your values are. Why not contract these services out? I'm sure you'll find there could be some savings there. Okay? If you want to attract quality businesses and people, you must provide a quality environment. Having owned a maintenance landscaping maintenance business I think I have good judgment on this matter. Lastly, we have paid for this park. We expect it. If not, then please arrange for my money that I have paid to you to be returned to me. It can stay in my bank account and earn me interest. Rather than this, thank you.

>> Mayor Reed: That concludes public testimony.

>> Councilmember Liccardo: Yes, I just wanted to -- some questions raised by members of the public, I'd like to clarify. First of course, these -- we are not stating these parks are not going to be built. We are deferring the construction, is that fair?

>> Albert Balagso: That's correct.

>> Councilmember Liccardo: Okay, with regard to various options that have been presented as we look at how we can move forward with some very creative alternatives, I know we have talked in the past

about the possibility of developers agreeing to take on maintenance costs in exchange for a reduced park fee. Is that something -- I don't know if you have an opinion on this Rick -- is that something that we can look to going forward as an option?

>> City Attorney Doyle: You're talking about using park fees for maintenance?

>> Councilmember Liccardo: Well, essentially I understand the Quimby act prevents us from using the money directly. The question is can we enter a negotiation where we would reduce the Quimby act obligation in exchange for a --

>> City Attorney Doyle: I think I'd like to address that offline because it raises a host of issues.

>> Councilmember Liccardo: Understood. And then I guess the last question would be with regard to volunteers and how much of this maintenance cost can really be absorbed by volunteers, I understand obviously there are some things that volunteers can be expected to do and some things they can't. As we look at a typical park maintenance budget and I'm just going to throw out the number 50,000 because that seems to be roughly in the middle of some of the numbers we see here do we have any sense about if you had a committed group of volunteers signing a pledge saying they're going to get out there every week, every two weeks, how much of that 50,000 does that really address?

>> Albert Balago: We haven't equated to dollars at this point in time and that is why we would want to go do those stakeholder discussions. Each park is different. Using the rose garden as an example, it's the rose beds. We can equate the time there, what time invested versus park staff can focus on other areas of the park. So each park, if it's designed such as Commodore, then you can look at the design and say this can be done by volunteers, perhaps, but this is what we need to do. Some of the parks are not designed yet so to get to that point would be problematic.

>> Councilmember Liccardo: Understood. Obviously members of the public are not happy. I'm hearing it myself through e-mail and phone calls and so forth. And I think when I ran for office, I made it very clear at the time, I thought we had a bad budget problem then, obviously, I had no idea. But I was very clear then that I said that we shouldn't build it if we can't maintain it. And I still believe that today. I think this is the responsible thing to do. We do a great job building things in the city. We have a very difficult time actually maintaining and operating them well because of fiscal challenges and we need to make sure we maintain whatever we build.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. First let me address the developers comments on exempting fees or delaying fees on parks. I don't support that at all. We need your money. I need to buy the land so I can acquire it. Without the land I can never deliver a park. I appreciate the comment but I don't agree with you on that one. Enough said. Plus that money I can't spend on maintenance, that's the key. I think people have been in this room and we just talked about the mid year budget review, it is a 100 million budget deficit, it's not going to happen. The hole is so big it's comical and by the time we hit June I don't know what this budget is going to look like but it's not pretty and this is just some of the things in the city to come based on some of the tradeoffs to come. We do make tradeoffs, we do still decide to spend ten to \$11 million of money on HNMF that we could easily take care of these parks, but that is a council decision that takes six votes to change that, but all these parks could be maintained tomorrow with that money, but again, a tradeoff. Gentleman brought up contracting out, again, that's a council policy we have that's on our competition policy that really, you know, doesn't have that happening. Rose garden as Albert brought up the policy doesn't allow the volunteers to operate lawn mowers and metal equipment and things of that matter volunteers are the rose gardens are taking care of the rose beds so there's not a par for par on that. Really the options are based on our current city rules is neighborhoods can form assessment districts tax themselves give that money to the city and have a city employee take care of that park. That's really the options we have in lieu of the budget having more money through increased revenue of sales tax or the voters taking a tax increase. This is the tough decisions that no one's going to be happy but that's the reality of where we're at.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. First of all I'd like to clarify, this would go to neighborhood services rather than economic development. But what did come out of economic development was a proposal for outsourcing. And so I would hope that we would take a look and maybe see if there is some interest. I mean there are people looking for work that may be willing to put a bid in. I'm not sure when would be a good time to do that. You said that at this point you're not ready for any building at this point.

>> Albert Balagso: Well, that's correct and that's the second step is to have those conversations with the stakeholders and see what the options might be. And then return to council with some ideas of if there are options that we can move forward with.

>> Councilmember Pyle: I would like to see some kind of options because I agree very much with Mr. Van Avery, we can't make -- we can't say give us money and then not do our part to honor that -- our obligations. So these are not ordinary times. That's for sure. So we -- we're going to have to take extraordinary measures in order to make it come out so that we are still fulfilling our obligations. So I think your idea with getting the input and doing the outreach makes sense to me.

>> Mayor Reed: City Manager.

>> City Manager Figone: Albert just to restate so I understand what we're doing, this is a recommendation to take a time out on proceeding on capital projects that were otherwise programmed so that we could evaluate the O&M impacts that will have to be confronted as part of this budget process, and at the same time, also look at alternative service delivery models to the degree they exist. So whether they be contracting out, or neighborhoods getting engaged, is that correct? And so we'll probably have that discussion as part of the budget process?

>> Albert Balagso: That's correct. We've identified this to come up annually in the budget process, the status of each project of whether or not they're capable of moving forward. But that wouldn't preclude us from coming back and saying, we have an HOA that's willing to take the project forward, and, you know, in between the process as well, but it's incumbent on something coming out of those stakeholder discussions.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Yeah, I want to thank the input especially from Michael Van Avery from the City of Evergreen. I appreciate the input. And I'm wondering if I could add a friendly amendment to the motion because I'm not sure that I heard what the City Manager said and I'm not sure that alternative service delivery was actually part of the memo put forward by staff. But I'd like to include that in terms of looking alternatives, alternative delivery and ideas from stakeholder meetings to see if we can come up with an alternative. But again I think bringing this forward and looking at this to see here's where we're at and we can't move forward unless we have a solution I think that's a responsible thing that parks and rec did so I would like to call that out though to see if we can see some alternatives.

>> Councilmember Chirco: From your presentation Albert I understood that that was one of the options that was available.

>> Albert Balagso: That's correct, we referred to it as alternative funding mechanisms which could be alternative service delivery.

>> Councilmember Chirco: I just wanted to call out to Albert that was in there, thank you.

>> Councilmember Herrera: So we'll be looking at that and possibly we can find some alternative to this.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Not too long ago we had a seven to four vote on the competition policy where we pretty much killed any chance of outsourcing so if it's coming back I'd certainly love to know when it's happening I'd go to CED myself. But I don't want to give anyone false hope in the audience that's watching, that we're going to change our mind. We just took that vote 7-4 to basically kill any chance of outsourcing to provide park maintenance for our residents during these severe economic times. So unless I'm hearing something completely different, and I don't remember correctly on a 7 to 4 vote, I'm just a little shocked. Thank you.

>> Mayor Reed: I think that concludes the council discussion. We have a motion on the floor to approve the recommendations. All in favor? Opposed? None opposed, that's approved. Our next item is 5.2, speaking of parks, application for prop 84 funds, statewide park program.

>> Move approval.

>> Second.

>> Mayor Reed: Motion is to approve. I have no cards from the public. All in favor, opposed, none opposed, that's approved. 7.1 actions related to county wide nondisposal facility element. We have a motion, did I get a second? I got a second yes I did. Motion is to approve. All in favor, opposed, none opposed, that's approved. Item 4.1 is a rezoning of property on the west side of Cadwallader avenue. That's in district 8, I think Councilmember Herrera wants to speak to that one.

>> Councilmember Herrera: Thank you, mayor. I'd like to hear from the public first.

>> Mayor Reed: We have some cards. All right, let's take the public testimony. I don't know who the applicant is. Is there a applicant? That would be Mr. Lazarini. Let the applicant go first and then we'll take the public testimony.

>> Thank you, mayor, members of the council. My name is Mark Lazarini with ASE properties LLC. We're the applicant for this project. It is our request from this council that they approve the zoning with Councilmember Herrera's direction as outlined in her memo. The site plan has evolved considerably since we started and this was a direct result in response to neighborhood feedback over numerous committee meetings and outreach. I'd like to acknowledge the efforts and initiative of Councilmember Herrera for her outreach and leadership effort, which helped build a better understanding of land use among the neighbors and to encourage meaningful and constructive input. As a result I think we have a better plan, there's still some more work to do as far as the fine-tuning which is more appropriately done at the PD permit stage and we acknowledge that. In fill can be a challenge. This project was no exception. It involved in this -- everyone pulling together and I really appreciate the effort of staff, the community, the neighbors, and I'd like to say, too, from a business standpoint it's particularly challenging given the real estate and finance markets that we're in. For us trying to manage a business transaction while investing considerable funds, i.e. seven digits time is of the essence. I did appreciate having the afternoon session which did save us a couple of weeks in terms of the hearing for the zoning. It's been a long arduous process we've been at this over five years and I would like to publicly thank and acknowledge the property owners who are also here today for hanging in there with us, the Hedrows, the Bartlets and the Pianacas, and I am certainly available to answer any questions should you have any after the public speaks. Thank you very much.

>> Mayor Reed: Satish Lele, Laurie Pianca, Cheryl Larios.

>> Good afternoon, city council members and very happy that you have invited us to speak on the subject. I must compliment above everyone else Rose Herrera because if you notice there are fewer people from our local community who have bothered to show up because they felt their wishes were completely ignored and as every single meeting we've had fewer and fewer people say what's the point, they're going to do exactly what the developer wants. And fortunately I believe in the system and Rose Herrera did a magnificent job by rallying around the local community and actually listening as a result of which we have a much better plan today. The plan today has just a few loose ends. And those loose ends I'd like to stipulate are written in the approval if you give the approval to this project because unfortunately, let me ask you a very personal question: Suppose a developer came along, and proposed to put up a wall of homes which completely obliterates your view, and has your new homeowners looking right into your master bedroom, your Jacuzzi and your living room, what would your reaction be? That's the kind of reaction I have. I have got a map here which shows the lands, my property is the one at the bottom in the middle. And you'll notice, I had three houses immediately abutting my fence. The important thing we need to specify is that there is a minimum combined offset, that means the side on either side of this house, each house must have 30 feet as a combined minimum offset. And the other is the distance from the fence. It should be a minimum of 30 feet. Given that, there will be less of an overlook. Now, the reason you don't see that, is because there is very steep gradient, this is a very steep slope. So yesterday, four people from the developers showed up and were looking into my back -- my -- in fact my master bedroom. And they're just people. Now imagine if there were two-story homes. Now, can you see the dilemma. So I urge the council, just to make a small stipulation that the exact placement of these homes is a minimum of 30 feet from the fence and a combined minimum offset of 30 feet. Otherwise this is a much better project and I compliment Rose Herrera for a fantastic job. Thank you for your time.

>> Mayor Reed: Laurie Pianca, Cheryl Larios, Bob Tedro.

>> Good afternoon, mayor and city council and Councilmember Herrera, I'm Laurie Pianca, I'm one of the landowners for the development. My family has lived on the property for four decades. And I just wanted to thank you all for your work on this project. And I'd also like to state that we understand completely what the previous speaker has stated. We, in our property, are surrounded on all sides by development. Our views are gone. And we are left holding acreage that we can't utilize. I shared pictures at the last council meeting and gave you a view of what we look at. And we appreciate that this developer has worked so long and so hard with us. When we originally entered into this agreement both my parents were on the contract. My dad died four years ago, and you know, so that shows you how long we've been working towards this. And we appreciate you recognizing and working with us to allow us the right to sell our property to a responsible developer, that is putting in a development that is appropriate for what we are surrounded with. And we have people looking in on us at all sides current. We just would like to be able to

develop our two acres in a way that is appropriate to the neighborhood, and we think that this developer has given us that option. Thank you. Thank you for your support.

>> Mayor Reed: Cheryl Larios, Bob Tedro, Bonnie Mace.

>> Hi, my name is Cheryl Larios. First I want to thank Councilmember Herrera for all her work on this. She's done a great job. But I'm here today to ask you to approve our proposed zoning. Your approval today would allow us to move forward with our project that has been in the works for over five years. Like Laurie I've lost my father during this process who was one of the original family members who started this. It's been very difficult going through this long process, just to exercise our rights as property owners. Our property has been surrounded by numerous developments. Our views, our quality of life for our family members has been greatly impacted, and our family's been there for 60 years. So everybody else that's built around us has -- have been the ones that have impacted our family. Our development, our developers have spent a lot of time and money to make this project consistent with the surrounding properties, and many changes have been made along the way to address the concerns of the neighbors. Changes have been made to me, all of the requirements and recommendations of the planning staff and our developers should be applauded for their hard work and for sticking with this project during these tough economic times. They believe in this project as much as we do. With your approval today we can move forward with something that would be better than the property and something that my grandparents who originally purchased the property over 60 years ago would be proud of. Thank you.

>> Mayor Reed: Bob Tedro, Bonnie Mace.

>> Mayor Reed, members of the council, I'm Bob Tedro. We are members of the Cerelli people, as Cheryl is our niece and her father was one of my wife's brothers. We've waited a long time to see this day approach. My wife, Marian, and her brother, and sister, have this dream to do something good with their parents' property. We have the memories of cutting the apricots and drying them every year and looking across the Evergreen valley and seeing all the other fields of fruit trees. So now as we move onwards we want to thank you for the previous approvals and all the work that's been done to bring this project forward. We now ask that you approve this next step of zoning to keep the project moving and keep it on track. And we want to thank you.

>> Mayor Reed: Bonnie Mace is our last speaker.

>> Thank you Mayor Reed and council Bonnie Mace representing the district 8 round table steering committee first of all as the others have said I really want to applaud Councilmember Herrera. This is a stellar example of how, when the community and the applicant and the city all get together, we can really create a much, much better project than the original project. So thank you so much for listening. And we recommend approval of this project with four clarifications, and these are -- they're minor clarifications, somewhat on the order of what Satish was talking about. Number one, there should be up to 41 units, and this is very important. There should be no more than 35 new residential units and six existing units and there might even be less depending on how the design standards work out with the planning staff and the applicant. Number two, there should be no cut through between Cadwallader and Neiman. The developer has agreed to this, it wasn't particularly stipulated in Councilmember Herrera's memo, and so we want to reiterate there should be no cut-through, which is what the community has asked for. Number three, there should be one contiguous development. Originally these were stipulated to be custom lots. The community doesn't want unbuilt lots that are weedy, and the developer has agreed that this will probably be in one or two phases, and once again, this is a clarification that he has said he would agree to. And the last there should be no more than three houses behind any existing lot. This addresses some of the issues that Satish was talking about, where you have existing lots that are wedge-shaped or unusual configurations. Previously there were up to five houses behind the lots and the developer has said that he will agree that there will be no more than three. You can ask him questions about that later but we want to stipulate that. And lastly there should be 25 foot setbacks 12 and a half side to side as Satish was talking about side to side. And particularly on the southern interface, most of the homes to the south of this development existing homes are big mansion type custom homes. So in order to make it look compatible with the existing neighborhood, we would specify five foot -- five foot setbacks is really too small, so we would hope for 25 feet. But these are just minor clarifications, and as it's been a long process, and once again, thank you so much to Councilmember Herrera in moving forward this project, thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I've distributed my memo on this zoning which includes eight conditions to the zoning. I guess it -- there it is. After hearing the public testimony I'd like to move

approval of this rezoning with a cap on the number of units at 41 and that is up to as has been mentioned and with the additional recommendations for consideration at the permit stage that I set forth in my memo. But first I want to start off by asking my colleagues for their patience as I go through a little bit of the history of this project. The changes that have been made today and the conditions that I'm putting forth. So first of all I want to thank all the surrounding neighbors. Not all the neighborhoods had the same issues and there were different neighborhoods involved in this yet different neighborhoods were able to come together, respect each other's opinions, and find places for compromise with the developer. And to the planning staff, your professionalism and patients are greatly appreciated. And to the applicant, for being committed to making the best of this project for the community. Many of my assurances to the community were based on the fact that you are San José based lifelong residents and are committed to doing quality work in your home town. The first time I heard about this issue is at one of my coffee chats around 7:30 a.m. at Starbucks at San Felipe and Aborn Road. Those residents came to me with a concern about the proposed density of 54 units on the site and the proposed cut through road from Nieman and Cadwallader. There were problems of for the general plan hearing was on Monday, April 27th. The Planning Commission was scheduled to hear the item the following Wednesday. This is not how our public outreach process is supposed to work. So I pushed the hearing out to the fall winter general plan hearing to allow truly allow quad time for the community to give input for the developer to answer questions and for the planning staff to write a staff report that reflected the community's opinions and modify the project where appropriate. I'm so glad I pushed it back because we're able to engage more neighbors and get the project where it is today. Over the late summer and fall we held three more community meetings attended by planning staff and city departments. Questions were answered, project modifications were made and it is a better projects for the discussions. That got us to the general plan hearing in December where the council approved an overall density on the site of 2.5 units per acre. After that we held one more community meeting last week and worked out some more issues, finally we're here today. The issues that have been addressed that continue to need attention of the planning staff to stay true to the intent of this memo and the desire of the neighbors are, the cut through road was removed making a safer community for the area residents, the density was reduced to reflect the density of the surrounding existing neighborhoods, the lotting has changed to make a better interface as some residents don't have a wall of homes behind their house, for example, at one point an existing pie shape property was going to have five homes behind his house a density that is really unacceptable. The developer has heard loud and clear that the interface of the existing neighbors and with the future properties is of incredible importance. Planning staff has also heard this loud and clear and has worked with the developer to address this issue. The grading elevations have been worked out and more work is being done to prevent homes from being perched over one another. We want to create a community of homes. We will not have two and a half to three story homes blocking view corridors and creating mega houses on top of each other. Thanks again for allowing me to get all this laid out and get us to the memo I put out for this item. And with that, I'd like to move the rezoning with the conditions I've outlined in my memo.

>> Mayor Reed: We have a motion on the floor.

>> Councilmember Herrera: And I want to add, I want to clarify that the concern that Satish Lele brought up, his house is included, his APN number, 67689006, he's actually called out in the memo, and I believe that the other items that have been mentioned are going to be -- are included in the memo. I did also add in terms of in the background we talked about wanting this to be a contiguous development. I don't feel that I can direct that but that is certainly the desire of the developer and I think he's going to do everything to do that and I want to specifically thank Satish and Karen Lele, Nitu Daliwahl, district 8 community round table represented by Bonnie Mace, and the developer, Mark Lazarini and DAL Properties, and also planning staff Joe Horwedel, Mike enderby, and Leslie Xavier who worked hard and attended those meetings.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Mayor, I just want to disclose that my office met with Tony Ariolla, with DAL Property, and congratulations to Councilmember Herrera for her efforts and her time spent on this and I think it will be a good project after it's all done.

>> Mayor Reed: I think that concludes our discussion. We have a motion to approve, as outlined by Councilmember Herrera. All in favor, opposed, none opposed, that's approved. I think that's the end of the business. We have left the open forum. We'll take that now, David Wall and Jeffrey mengers.

>> David Wall: My real presence here today is what I'm going to talk to you about. The other issues today were just ancillary and were just -- presented themselves. For sometime I've reported about criminal activity at North 10th street at Horning Street in regards to stolen and abandoned shopping carts. Today when I went to make my report, which is in district 3, poor Manuel, out there cutting his geraniums that had grown through his chain link fence, removing his beautiful succulent ivy in front of his fence. His pets are having to be removed, his dogs and his chickens, which is a commerciality area, by the way, by the jack-booted thugs of code enforcement. Manuel tells me that he is being blamed for these shopping carts. Manuel is a victim, just as his stores are a victim, of thieves that steal these shopping carts, go through neighborhoods, make a tremendous amount of money per shopping cart, anywhere from 20 to \$200 per day, dump them at 10th and horning, north 10th and horning, then code enforcement either out of retaliation for my continued reporting of this issue or through their congenital incompetence which has been reflected in this issue and other issues time immemorial. We have seen the destruction of flowers, removal of pets, for an old Mexican guy with a heart condition. Which the San José police has known this area for decades with no problem. Neighbors don't care because there aren't any neighbors. It's a commercial area except for one neighbor across the railroad tracks and they don't care either. The vagrants, the criminals that inhabit this area are legion. They are predominant to the rescue mission somewhere on Charles, I forget the actual location.

>> Mayor Reed: Sorry your time is up. Jeffrey mengers our last speaker.

>> My name is Jeffrey Mengers. I have to apologize. My problem is that I'm slow, two and a half years slow. I need -- three months ago I came here to invite (inaudible) as a plaintiff and looked up to see nothing but smiles, thanks. I hope Richard Doyle is smiling. There's nothing that spells integrity better than someone walks out with photo I.D., it's got a picture of them and their name when they walk out. I need to talk to the city attorney's office. I think last November I went over some unidentified woman comes out and sits down, last words were it means you have to leave. That's not the reason why Richard is a defendant. I'm proceeding using the full art and (inaudible) of sections 378 through 382 of the Civil Code -- of the code of civil procedure. And that the only way going to be able to -- I'm just going to be able to proceed with a misdesignated not complex case is with a Website. I have to notify you all of my appeal, I'm preparing it will go into the sixth district Court of Appeals. You haven't gotten the notice yet. The case has already been dismissed against the county and AMR who have appeared in the case. I need to know from -- I need to get a vote essentially from everyone as to whether they're going to join me as a plaintiff. Like who should be defendants and who should be plaintiffs, it will take a while. This case is complex to explain it all to everyone. I just need to introduce myself to you all. I just filed some papers with the clerk's office. And I hope the city attorney's office will take it seriously. I do need to communicate with the city. Remember more --

>> Mayor Reed: I'm sorry your time is up.

>> A plaintiff.

>> Mayor Reed: That concludes the open forum. We are adjourned.